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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901. 1902.

No. 222. 39.

THE SECURITY TRUST COMPANY, AS ADMINISTRATOR OF THE ESTATE OF SUMNER W. MATTESON, DECEASED, PETITIONER,

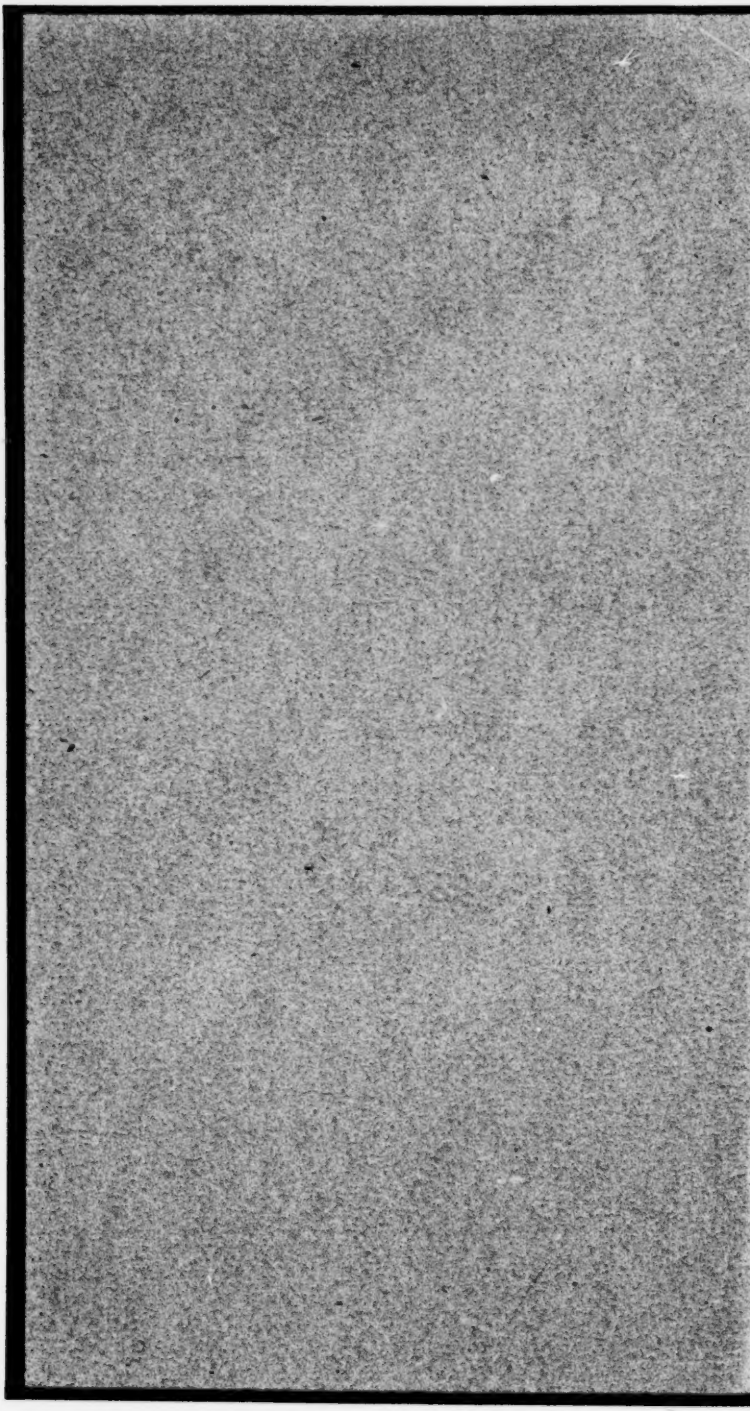
vs.

THE BLACK RIVER NATIONAL BANK OF LOWVILLE.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

PETITION FOR CERTIORARI FILED JANUARY 17, 1901.
CERTIORARI AND RETURN FILED MARCH 25, 1901.

(18,025.)



(18,025.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1901.

No. 232.

THE SECURITY TRUST COMPANY, AS ADMINISTRATOR OF THE ESTATE OF SUMNER W. MATTESON, DECEASED, PETITIONER,

vs.

THE BLACK RIVER NATIONAL BANK OF LOWVILLE.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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a Pleas and proceedings in the United States circuit court of appeals for the eighth circuit, at the May term, 1900, of said court, begun and held at the United States court-house in the city of St. Paul, Minnesota, on the first Monday in May, to wit: the seventh day of May, A. D. 1900, before the Honorable Henry C. Caldwell, Honorable Walter H. Sanborn and Honorable Amos M. Thayer, circuit judges.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

Attest: JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it remembered, that heretofore, to wit: on the sixteenth day of November, A. D. 1899, a transcript of record was filed in the office of the clerk of the United States circuit court of appeals for the eighth circuit, pursuant to a writ of error directed to the circuit court of the United States for the district of Minnesota, in a case wherein Security Trust Company, as administrator of the estate of Sumner W. Matteson, deceased, was plaintiff in error, and The Black River National Bank of Lowville was defendant in error, which said transcript of record is in the words and figures following to wit:

1 UNITED STATES OF AMERICA:

BLACK RIVER NATIONAL BANK OF LOWVILLE, Petitioner,
vs.
THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased, Defendant.

Pleas before the honorable the judges of the circuit court of the United States of America for the district of Minnesota, third division, of the January, 1899, term of said court, held in the city of St. Paul, in said district, in the year of our Lord 1899.

DISTRICT OF MINNESOTA, *ss:*

Be it remembered that on this 22nd day of January, A. D. 1897, came the plaintiff and filed in the clerk's office of said court its bill of complaint in words and figures following, to wit:

Circuit Court of the United States, District of Minnesota, Third Division.

BLACK RIVER NATIONAL BANK OF LOWVILLE, Petitioner,
vs.
THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased, Defendant.

The petitioner above named respectfully shows to the court that The Black River National Bank of Lowville, during all the times

hereinafter stated was, and is, a corporation duly incorporated, organized and created under the national banking laws of the United States, and doing a general banking business at Lowville, county of Lewis and State of New York, and having its general place of business and only place of business in said Lowville, in the State of New York and is a resident and citizen of the State of New York. That all of its officers and employees are residents and citizens of the State of New York.

II.

That the defendant, The Security Trust Company is a corporation created under and by virtue of the laws of the State of Minnesota, and doing business in the State of Minnesota, and having its principal and only place of business at the city of St. Paul, county of Ramsey and State of Minnesota, and it and all its officers are residents of the State of Minnesota.

2 That said defendant, The Security Trust Company of St. Paul, was duly appointed administrator of the estate of Sumner W. Matteson, deceased, by the proper probate court in the county of Ramsey, to wit, the probate court of the county of Ramsey and State of Minnesota, on or about the 3rd day of September, 1895. That during his lifetime and at all the times hereinafter stated, prior to the said 3rd day of September, 1895, the said Sumner W. Matteson was a resident and citizen of the State of Minnesota.

III.

That heretofore, to wit, on the 27th day of February, 1894, the said Sumner W. Matteson, otherwise known as S. W. Matteson, executed his certain promissory note in writing, whereby, for value received, he promised to pay to the order of James H. Easton & Co. at the First National Bank of Decorah, Iowa, the sum of twenty-five hundred dollars, four months after date, with interest thereon at the rate of eight per cent. per annum from date until paid. That said promissory note is in words and figures as follows, to wit:

"DECORAH, IOWA, *Feb'y* 27, 1894.

$2,500. No. —.

Four months after date, for value received, I promise to pay to James H. Easton & Co. or order, at the First National Bank of Decorah, Iowa, twenty-five hundred dollars, with interest at the rate of eight per cent. per annum from date until paid.

(S'd) S. W. MATTESON.

Post-office ——.

(Indorsed on back:) Demand, notice and protest waived and payment guaranteed at maturity. Jas. H. Easton & Co. Interest paid to November 24, 1894."

That on the same date, to wit, on the 27th day of February, 1894, the said Sumner W. Matteson, otherwise known as S. W. Matteson,

executed his certain other promissory note in writing, whereby, for value received he promised to pay to the order of James H. Easton & Co. four months after date, the sum of twenty-five hundred dollars, with interest thereon at the rate of eight per cent. per annum from date until paid.

That said promissory note is in words and figures as follows, to wit:

"DECORAH, IOWA, *Feb'y* 27, 1894.

$2,500. No. —.

Four months after date, for value received, I promise to pay to James H. Easton & Co. or order, at the First National Bank of
3 Decorah, Iowa, twenty-five hundred dollars, with interest at the rate of eight per cent. per annum from date until paid.

(S'd) S. W. MATTESON.

Post-office ——.

(Indorsed on back:) Demand, notice and protest waived and payment guaranteed at maturity. Jas. H. Easton & Co. Interest paid to November 24, 1894."

That thereafter, to wit, on the 22nd day of March, 1894, and before maturity of said notes last above described, the said James T. Easton & Co., payee in said notes, for value received, sold, transferred and assigned each of said notes last above described to the Black River National Bank of Lowville. And on the 22nd day of March, 1894, the Black River National Bank of Lowville purchased the said notes and each thereof of said James H. Easton & Co. for value, before maturity, in the usual course of business, without any notice of any defense or defenses to said notes, or either thereof. That said James H. Easton & Co. was a copartnership doing business at Decorah, Iowa, and all the members of said firm were residents and citizens of the State of Iowa, at all the times stated herein. That your petitioner is now and ever since the 22nd day of March, 1894, has been the owner and holder of each and every of said notes above and herein described. That no part of said notes, or either of them, has ever been paid, except the interest thereon to the 24th day of November, 1894.

IV.

That defendant, as administrator of the estate of Sumner W. Matteson, deceased, has in its hands and under its control a large amount of property, money and effects which belonged in his lifetime to the said Sumner W. Matteson and petitioner, on information and belief allege- that the property, money and effects remaining in the hands of said defendant and under its control *is* more than sufficient to pay the amount due this petitioner upon said promissory notes hereinbefore described and herein set forth, after the payment of all just debts and charges against the estate of Sumner W. Matteson, deceased. That the estate of Sumner W. Matteson, deceased, is now in process of settlement and in the probate court of Ramsey county, State of Minnesota, and has not been fully and finally settled and

probated, and that said administrator had never been discharged and is still the administrator of the said estate of said Summer W. Matteson, deceased.

4 V.

That no part of said notes has been paid, except as herein alleged and your petitioner has demanded of defendant above named, that said defendant make payment of said notes and each thereof out of the funds, money and property in its hands and belonging to the estate of said Summer W. Matteson, and said defendant has at all times since its appointed as such administrator well known that said notes were due and unpaid and were held by petitioner herein, and said defendant has neglected and refused to pay said notes, or any part thereof.

Wherefore, petitioner demands judgment against the defendant for the sum of five thousand dollars ($5,000) and interest thereon at the rate of eight per cent. per annum from and since the 24th day of November, 1894, together with the costs and disbursements of this action.

STRINGER & SEYMOUR,
Attorneys for Petitioner, Nat. Ger. Am. Bank Building, St. Paul, Minnesota.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

E. C. Stringer came before me personally and being first duly sworn, deposes and says that, he is one of the attorneys of the petitioner in the above-entitled action, and authorized to make this affidavit in its behalf. That he has read the foregoing complaint and that the same is true to the best of his knowledge, information and belief, and that the reason why this affidavit of verification is not made by said petitioner is that said petitioner and all its officers are absent from the county of Ramsey and State of Minnesota, wherein resides this affiant.

E. C. STRINGER.

Subscribed and sworn to before me this 21st day of January, 1897.

[NOTARIAL SEAL.] WILLIAM D. MITCHELL,
Notary Public, Ramsey County, Minn.

Complaint. Filed January 22, 1897. Henry D. Lang, clerk. By Louise B. Trott, deputy.

And thereupon, upon application of said attorneys a summons was duly issued out by said court under the seal thereof, and in the words and figures following, to wit:

5 UNITED STATES OF AMERICA, } ss:
District of Minnesota, Third Division, }

In the Circuit Court of the United States for the District of Minnesota.

BLACK RIVER NATIONAL BANK OF LOWVILLE, Plaintiff, }
against }
THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased, Defendant. } Summons.

The President of the United States of America to the defendant above named, Greeting:

You are hereby summoned and required to answer the complaint in this action, which has been filed in the office of the clerk of this court, in St. Paul, county of Ramsey, and State of Minnesota, and file your answer in said clerk's office, within twenty days after the service hereof, excluding the day of such service, and if you fail to answer the complaint as aforesaid, the plaintiff will take judgment against you for the sum of $5,000.00 and interest thereon at the rate of eight per cent. per annum from and since the 24th day of November, 1894, together with the costs and disbursements of this action.

For the marshal of the district of Minnesota to execute.

Witness the Honorable Melville W. Fuller Chief Justice of the Supreme Court of the United States of America, this 22nd day of January, A. D. 1897. Issued at my office in the city of St. Paul, under the seal of said circuit court, the day and year last aforesaid.

U. S. Circuit Court Seal.

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

STRINGER & SEYMOUR,
Plaintiff's Attorneys.

Summons. Returned and filed Jan. 23, 1897. Henry D. Lang, clerk. By Louise B. Trott, deputy.

UNITED STATES OF AMERICA, } ss:
District of Minnesota, }

I hereby certify and return that I served the annexed summons on the therein-named defendants, The Security Trust Company of St. Paul, as administrators of the estate of Sumner W. Matteson, deceased, by handing to and leaving a true and correct copy
6 thereof with Edward J. Hodgson, the president of said trust Co. personally at St. Paul, in said district on the 23rd day of January, A. D. 1897.

R. T. O'CONNOR,
U. S. Marshal,
By G. D. HENRY, *Deputy*.

Fees $2.06.

Thereafter and on the 12th day of February, 1897, the following answer was filed in the clerk's office of said court in the words and figures following, to wit:

Circuit Court of the United States, District of Minnesota, Third Division.

BLACK RIVER NATIONAL BANK OF LOWVILLE, Petitioner,
vs.
THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased, Defendant.

For answer to the plaintiff's complaint the defendant shows to the court and alleges:

It admits that the plaintiff Black River National Bank of Lowville is and was a corporation organized under the national bank laws of the United States, having its place of business in the State of New York, and all of its officers of the State of New York, all as in the first paragraph or subdivision of said complaint is alleged.

It admits that it is a corporation created under and by virtue of the laws of the State of Minnesota, with its only place of business in the city of St. Paul, in Ramsey county, State of Minnesota, and with all its officers residents of the State of Minnesota, all as in the second paragraph or subdivision of said complaint alleged, and that said Sumner W. Matteson therein mentioned at the times in said complaint alleged was a resident and citizen of the State of Minnesota, and that this defendant on September 3, 1895, was duly appointed administrator of the estate of Sumner W. Matteson, he having died prior to that date while a resident of said State of Minnesota, all as in the second paragraph or subdivision of said complaint is alleged.

Further answering and for a separate defense herein it alleges that it duly qualified as administrator of the estate of said deceased and proceeded to discharge its duties as such administrator under such appointment; that thereafter such proceedings were duly had in said probate court of Ramsey county, Minnesota, *and* that said estate was fully administrated and settled, and that this defendant duly made and filed its final account of such administration and

7 that the said final account was by probate court duly examined, settled and allowed and the residue of the property of said estate and of said deceased duly assigned and transferred to and vested in the next of kin and heirs of said deceased by said probate court and this defendant as such administrator duly discharged by said probate court long before the commencement of the above-entitled action, that after the said property and estate had been so duly assigned and transferred to and vested in said heirs and next of kin and the final account of this defendant so examined, settled and allowed and this defendant so discharged as administrator, and long before the commencement of the above-entitled action, this defendant duly delivered all the property and effects in its possession or under its control to the persons entitled

thereto, and that it is not administrator of the estate of the deceased and has not been, nor has it had in its possession or under its control any money, property or effects of said deceased or his said estate, since long prior to the commencement of the above-entitled action.

That by reason of the foregoing facts the plaintiff cannot maintain said action.

Further answering and for a further separate defense herein (not waiving however any defense hereinbefore set out, or any right to urge any of the facts hereinbefore set out to defeat said action) it alleges that said Sumner W. Matteson, being then a resident of the city of St. Paul in the State of Minnesota, on the 22nd day of July 1895, died in the said city of St. Paul leaving real and personal property in said Ramsey county and elsewhere in the State of Minnesota; that this defendant was duly appointed administrator of his said estate on September 3, 1895, by the probate court for said Ramsey county, as in the complaint alleged, and duly qualified as such and assumed the duties thereof, as hereinabove alleged, and that it had continuously since said day remained within the State of Minnesota; that the above-entitled action was not commenced until subsequent to the twentieth day of January, 1897, and the right to commence the above-entitled action was barred prior to that date.

Further answering and for a further separate defense herein (not waiving however any defense hereinbefore set out, nor any right to urge any of the facts hereinbefore set out to defeat said action) it alleges that at the time it was so appointed administrator of the estate of said deceased as in the complaint alleged, and letters of administration by said probate court to it issued, said probate court in accordance with the statute in such case made and provided, duly made an order limiting the time within which creditors might present claims against said deceased for examination and allowance to six months from the 3rd day of September, 1895, and appointing the first Monday in April, 1896, (being the 6th day of April, 1896) as the time when and the court-room of said court as the place where, said court would examine and adjust the claims and demands of all persons against said deceased; that notice was duly given to all creditors and all persons interested by duly publishing said order as by statute in such case made and provided; that notwithstanding said order and the due publication thereof; the plaintiff wholly failed and neglected to present the notes sued on in the complaint, or any claim on account thereof, to said probate court, or commence any action thereon in any court within the time limited in said order, or at the time therein fixed for hearing such claims, or at any time until after final settlement of said estate and the account of this defendant as such administrator, and that by reason of the premises the above-entitled action is barred.

8

Further answering, it admits on information and belief that said Sumner W. Matteson, on or about the 27th day of February, 1894, executed the two promissory notes in paragraph or subdivision III of said complaint described, and that said James H. Easton & Co. was a copartnership doing business at Decorah, Iowa, and that all

the (*manbers*) of said firm were residents and citizens of the State of Iowa, at all times stated in said complaint.

It alleges on information and belief that said promissory notes have each been fully paid and satisfied, and denies that the plaintiff is the owner of either of the same.

It denies that the plaintiff at the time alleged in the complaint or at any time purchased said notes or either of them for value before maturity, in the usual course of business without notice of any defense or defenses to the same, and alleges on information and belief that each of said notes were executed as to nine-sixteenths thereof solely for the accommodation of said James H. Easton & Co., and without consideration, and upon the express agreement and understanding between said deceased and said James H. Easton & Company that said deceased should not be held or bound to pay any portion thereof except seven-sixteenths thereof and that if the said notes were purchased by the plaintiff it took the same from said James H. Easton and Company with full knowledge and notice of the fact that each of said notes was as to nine-sixteenths thereof executed by said deceased for the accommodation of said James H. Easton & Company, and without consideration and of the said understanding and agreement — said deceased and said James H. Easton & Company.

9 It denies that there is or was at the time said action was commenced in its hands or under its control as administrator of the estate of said deceased any property, money or effects whatever which belonged in his lifetime to said deceased, and denies that the estate of said deceased is now in process of settlement in said probate court, and alleges that the same had been fully settled, probated and administered upon and discharged from said court long prior to the commencement of the above-entitled action and that this defendant long before the commencement of this action had been discharged as such administrator and was not at the time of the commencement of said action and is not now administrator of the estate of said deceased.

It admits that the plaintiff caused payment of said notes to be demanded of it subsequent to the time when said administration had been fully closed and this defendant discharged as such administrator and after it had turned over all money, property and effects of said deceased remaining in its hands to the persons entitled thereto, but denies that it made any demand upon it for payment of either of said notes prior to that time. It admits that it did not pay said notes or any portion thereof.

Except as hereinbefore expressly admitted it denies each and every allegation, matter and thing in said complaint contained, whether as therein alleged or otherwise.

Further answering it alleges, that if said notes or any part thereof, have not been paid and are held or owned by the plaintiff, it, the plaintiff, holds as collateral security therefor ten bonds of the Iowa and Minnesota Investment Company of the par value of five hundred dollars each, and that it is not entitled to be paid anything on

account of said notes until it shall have surrendered or exhausted the said collateral security.

Wherefore defendant prays that the plaintiff take nothing by its action, and that the defendant may recover costs and its disbursements in this action.

EDMUND S. DURMENT,
Attorney for Defendant.

Office: 411 & 410 N. Y. Life bldg. Residence: 825 Osceola Ave., St. Paul, Minnesota.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

Edward J. Hodgson being first duly sworn on oath says that he is president of Security Trust Company the defendant in the above-entitled action; that the foregoing pleading is true of his own knowledge except as to those matters which are therein stated on his information and belief, and as to those matters that he believes it to be true.

EDWARD J. HODGSON.

Subscribed and sworn to before me on this 12th day of February, A. D. 1897.

EDMUND S. DURMENT,
Notary Public, Ramsey County, Minn.

Answer. Filed February 12th, 1897. Henry D. Lang, clerk.

Thereafter and on the 20th day of March, 1897, the following stipulation was filed in the clerk's office of said court in the words and figures following, to wit:

United States Circuit Court, District of Minnesota, Third Division.

THE BLACK RIVER NATIONAL BANK OF LOWVILLE, Petitioner,
vs.
THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased, Defendant.

It is hereby stipulated and agreed by and between the parties and their respective attorneys hereto, that the said petitioner may have to and inclusive of the 20th day of March, 1897, in which to file reply to the answer of the defendant in the above-entitled cause.

EDMUND S. DURMENT,
Attorney for Defendant.
STRINGER & SEYMOUR,
Attorneys for Petitioner.

Stipulation. Filed March 20th, 1897. Henry D. Lang, clerk.

Thereafter and on the 20th day of March, 1897, the (*the*) following reply was filed in the clerk's office of said court in words and figures following, to wit:

Circuit Court of the United States, District of Minnesota, Third Division.

BLACK RIVER NATIONAL BANK OF LOWVILLE, Petitioner,
vs.
THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased, Defendant.

For reply to the answer of the defendant in the above-entitled action, the petitioner above named denies each and every allegation, matter and thing in said answer contained, and the whole thereof, except as admitted in the complaint herein, and as hereinafter admitted or qualified.

11 Petitioner admits that Sumner W. Matteson died at St. Paul, Minnesota on or about the 22nd day of July 1895, leaving a large amount of real and personal property in the county of Ramsey and elsewhere in the State of Minnesota, and that this defendant as such administrator came into the possession of all of such personal property; admits that this action was not commenced until the 22nd day of January 1897; admits that the probate court of Ramsey county made an order limiting the time within which creditors of said Matteson might present claims against said deceased for examination and allowance, to six months from the 3rd day of September, 1895, and appointed the first Monday of April, 1896, being the 6th day of April as the time when said court would examine and adjust said claims against said deceased, and that said notice was published in compliance with the order of the court; that the time limited by said court for the presentation of claims was less than the time allowed by the statute of the State of Minnesota for the presentation of such claims. But petitioner specifically denies that said order, or said publication of notice to creditors was duly made, or was made in accordance with the statute in such case made and provided, and charges the fact to be that, said order and said publication of notice to creditors were improperly and illegally made, were not in the accordance with the provisions of the statutes in such case made and provided; and were wholly null and void.

Petitioner admits that it did not present its claims in said petition set forth within the time stated in said order, and said notice, and that it had no knowledge, information or notice that any proceedings whatsoever had been instituted or commenced in said probate court, in any way affecting the estate of Sumner W. Matteson, deceased, until shortly before the commencement of the action herein.

Petitioner denies that any other or further payment had been made on said notes described in the complaint, other than in said complaint stated.

Petitioner further alleges that it has not, and never had had any knowledge or information as to any agreement or understanding between said Matteson, deceased, and James H. Easton & Company, as stated in said answer, or otherwise, and denies the same and the whole thereof, and denies that said notes, or either of them, or any

part thereof was executed for the accommodation of said James H. Easton & Company.

Petitioner admits that it holds certain bonds as collateral security to the notes set forth in the complaint herein, but alleges on
12 information and belief that said bonds are very little, if any, value and in any event, of value not in excess of the sum of two hundred and fifty dollars ($250,) and that complainant ever has been and now is ready and willing to surrender said bonds and all thereof, on payment of the notes set forth in the complaint herein.

Wherefore, petitioner asks judgment as demanded in the complaint herein.

STRINGER & SEYMOUR,
Attorneys for Petitioner,
Nat. Ger. Am. Bank Bldg., St. Paul, Minnesota.

Reply. Filed March 20th, 1897. Henry D. Lang, clerk.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

E. C. Stringer came before me personally and being first duly sworn, deposes and says that he is one of the attorneys for the petitioner in the above-entitled action and authorized to make this affidavit in its behalf. That he has read the foregoing reply and the same is true to the best of his knowledge, information and belief, and the reason why this affidavit of verification is not made by said petitioner, is that said petitioner and all of its officers are absent from the county of Ramsey and State of Minnesota, wherein resides this affiant.

E. C. STRINGER.

Subscribed and sworn to before me this 19th day of March, 1897.
[NOTARIAL SEAL.] WILLIAM D. MITCHELL,
Notary Public, Ramsey County, Minn.

Thereafter and on the 5th day of January, 1899, the following stipulation was filed in the clerk's office of said court in words and figures following, to wit:

Circuit Court of the United States, District of Minnesota, Third Division.

BLACK RIVER NATIONAL BANK OF LOWVILLE, Petitioner,
vs.
THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased, Defendant.

It is hereby stipulated that the above-entitled cause be placed on the (calender) for the January A. D. 1899 term of said court without further notice.

STRINGER & SEYMOUR,
Attorneys for Plaintiff.
EDMUND S. DURMENT,
Attorney for Defendant.

Stipulation. Filed January 5th, 1899. Henry D. Lang, clerk.

13 Thereafter and on the 18th day of January, 1899, the following stipulation of facts and waiver of jury trial was filed in the clerk's office of said court in words and figures following, to wit:

Circuit Court of the United States, District of Minnesota, Third Division.

BLACK RIVER NATIONAL BANK OF LOUISVILLE, Petitioner,
vs.
THE SECURITY TRUST COMPANY OF ST. PAUL as Administrator of the Estate of Sumner W. Matteson, Deceased, Defendant.

The parties to the above-entitled action have stipulated and agreed that for the purpose of this action the following facts shall be taken to be true, and shall be spread upon the records, and the said action be tried and determined on such stipulation of facts by the court without a jury, a jury being waived by the parties.

The allegations contained in subdivisions I, II, III of the petition or declared in the above-entitled action are true, (being all of said petition or declaration preceding the subdivision thereof marked IV,) except that Sumner W. Matteson having died July 22, 1895, did not after that date reside in St. Paul Minnesota.

Sumner W. Matteson, mentioned in the pleadings, was a resident and citizen of the State of Minnesota from prior to January 1, 1894, until his death, during that time residing at the city of St. Paul in Ramsey county, Minnesota. He died at the said city of St. Paul intestate, a resident thereof, and leaving real and personal property there situate on July 22, 1895.

Thereafter such proceedings were duly had in the probate court for Ramsey county, Minnesota, that said Security Trust Company, mentioned in the petition or declaration was duly appointed administrator of the estate of said deceased, and letters of administration issued out of said court thereon to it as such administrator, and it duly qualified and entered upon its duties as such administrator on September 3, 1895. Thereafter and on September 3, 1895 said court made and entered the following order with reference to filing claims against said deceased, viz:

"STATE OF MINNESOTA, } ss:
County of Ramsey, }

Probate Court.

In the Matter of the Estate of SUMNER W. MATTESON, Deceased.

Letters of administration on the estate of Sumner W. Matteson, deceased, late of the city of St. Paul, of the county of Ramsey,
14 and State of Minnesota, being granted to the Security Trust Company, a Minnesota corporation.

It is ordered that six months be and the same hereby is allowed from and after the date of this order, in which all persons having claims or demands against the said deceased are required to file the same in the probate court of said county, for examination and allowance, or be forever barred.

It is further ordered, that the first Monday of April, 1896, a- 10 o'clock a. m., at a general term of said probate court to be held at the court-house in the city of St. Paul, in said county, be and the same hereby is appointed as the time and place when and where the said probate court will examine and adjust said claims and demands.

And it is further ordered, that notice of such hearing be given to all creditors and persons interested in said estate by forthwith publishing this order once in each week for three successive weeks in the St. Paul Dispatch, a daily newspaper and published in said county.

Dated at St. Paul, this 3rd day of September, 1895.

By the court,

[s. s.] (Signed) G. WILLRICH,
Judge of Probate."

Said order was published in the same manner and length of time as required by statute for publication of an order limiting time for presenting claims against a deceased person for examination and allowance, it having been published in a legal newspaper in said county on September 10, 17, 24, 1895, and proof of such publication in due form was filed in said court in due season. The administrator duly filed an inventory of the estate of said deceased, and the same was duly appraised. That said defendant as such administrator received and took into its possession assets, funds and property of said estate largely in excess of all claims filed and allowed against said estate in said probate court, and the indebtedness in the complaint herein described, and the expenses of administration. On March 31, 1896, the administrator filed its account of its administration, and its petition to have the same examined and allowed and for the distribution of the residue of the estate to the persons entitled thereto by law. Said petition was duly verified on March 31st, 1896, and is as follows:

"STATE OF MINNESOTA, }
Ramsey County, } *ss:*

In Probate Court.

In the Matter of the Estate of SUMNER W. MATTESON, Deceased.

To the judge of probate in and for said county:

The petition of Security Trust Company as administrator of said estate respectfully represents that it has fully administered
15 said estate, and paid all the debts allowed by the court against the estate of said deceased, and the expenses of administra-

tion, as will appear by its final account of its administration, and the vouchers therein referred to, and your petitioner would therefore pray that a time and place be fixed for examining and allowing said account, and for the assignment, and distribution of the residue of said estate to the parties entitled thereto by law, and that notice thereof be given, agreeably to the statute in such case made and provided, and (*ad*) this court in its discretion may deem proper.

Dated at St. Paul, this 31st day of March, A. D. 1896.

(Signed) SECURITY TRUST COMPANY,
By EDWARD J. HODGSON, *President.*"

Said court made and entered an order for hearing said petition and notice of such hearing was given as by law required, and proof thereof filed in due season. Said court at the time fixed for such hearing heard the petition and examined said final account and thereupon made and entered an order allowing said final account and made and entered a final decree distributing all the estate of said deceased in Minnesota to the widow and children of said deceased. The order allowing said final account was as follows:

STATE OF MINNESOTA, } ss:
County of Ramsey, }

In Probate Court, Special Term, April 27, 1896.

In re Estate of SUMNER W. MATTESON, Deceased.

In the matter of the settlement of the final account of Security Trust Company as administrator of said estate.

Pursuant to the order of this court made and entered in said matter on the 27th day of April, 1896, the account of the Security Trust Company as administrator of said estate came on this day to be examined, and the due proof of the publication of the notice of such examination in the matter required by said order of this court, being made and filed herein and the said administrator appearing by its secretary and treasurer, Charles D. Matteson and its attorneys Bigelow and Taylor, whereupon the said probate court proceeded to examine the said administrator through its secretary and treasurer upon oath, and the vouchers and accounts of the said administrator having been duly filed and examined.

And it appearing that the said administrator has accounted for every part of the estate of Sumner W. Matteson deceased, and that no profit has been made by it of any increase thereof, and the accounts of the said administrator having been finally settled and adjusted, and a summary statement of the same as finally set-
16 tled allowed, and adjusted by this court, being below and herewith recorded; on motion of said administrator by its said attorneys.

Ordered that the said accounts be and the same are finally settled and allowed, as filed and adjusted in and by this court.

Summary Statement.

In same matter, same term.

The judge of probate of said Ramsey county, makes and records this summary statement of the final accounts of Security Trust Company as administrator of said estate of Sumner W. Matteson as adjusted, settled and allowed by said probate court.

The debit side of said account.....	$11,981.01
The credit " " " "	11,412.58
Balance due.....	$568.43

[L. S.] (Signed) G. WILLRICH,
Judge of Probate."

The final decree was as follows:

"STATE OF MINNESOTA, } ss:
County of Ramsey, }

In Probate Court, Special Term, April 27, 1896.

In the Matter of the Estate of SUMNER W. MATTESON, Deceased.

It appearing to the court now here, on satisfactory proofs and the evidence, that the funeral charges, expenses of last sickness of said deceased, and the cost of the administration of said estate, have been fully paid and that all debts existing against said deceased, *are* allowed by the court pursuant to law, have also been fully paid and satisfied and that said estate has been fully administered, as by the final account of the Security Trust Company, administrator of said estate heretofore duly audited and allowed by this court pursuant to due notice given and served will appear, reference being had thereto;

And it further appearing, that due notice of the application for this final decree in said matter, assigning the estate to the person thereto entitled by law, has likewise been given and served pursuant to the law in such case made and provided and decided;

And it further appearing, that said deceased died intestate, and that the residue of said estate consists of the following-described real estate, situate, lying and being in the county of Ramsey and State of Minnesota, to wit: (Here is inserted the description of the real property in Minnesota.)

17 And it further appearing that the residue of the personal property of said estate consists of the following personal property, to wit:

Stocks and Bonds.

Certificate No 70, for 500 shares of capital stock in the Security Trust Company of St. Paul, Minn.

Certificate 211, for 10 shares of capital stock of First National Bank of Decorah, Iowa.

Certificate No. 5, for 362 shares: Certificate No. 34, for 67 5/8 and certificate No. 50 for 70 2/8 shares of the capital stock of the Duluth Union Land Co. of St. Paul, Minnesota.

Certificates 61 to 70 inclusive for 20 shares each, and bonds Nos. 18, 19, 25, 26, 39, 40, 43, 44, 49, 50, 63, 64, 70, 71, 76, 77, 85, 86, 92, 93, 98, 99, 102, 103, 116, 117, of the Iowa & Minnesota Investment Company of Decorah, Iowa.

Certificate 58 for 2,178 shares of the capital stock of the Buffalo Land & Exploration Company of Duluth, Minnesota.

Certificate 78 for 25 shares, stock of the Grand Opera House Company, of Decorah, Iowa.

Bills Receivable.

Mortgage of Ingberg Casperson, dated —— — secured on lot 10, block 38, original town of Decorah.

Mortgage of M. O. Dalvey, dated June 16, 1893, secured on lot 3, block 2, Matteson's addition to Decorah.

Mortgage of Frank M. Hughes, dated November 15th, 1890, secured on an undivided 1/6 of lot seven block 19, in the original town of Decorah.

Note of W. B. Richard, of New York city, due Dec. 1st, 1893, for $1,000.

Cash on hand five hundred and sixty-eight dollars and forty-three cents (568.43.)

And it further appearing that the said Sumner W. Matteson left him surviving as his heirs-at-law and entitled to share in his said estate, his wife, Louise M. Matteson, and his children, Herbert H. Matteson, Sumner W. Matteson, Charles D. Matteson, Roy G. Matteson, Max Matteson and Claire Louise Matteson, and no others.

Now therefore, on the petition of said Security Trust Company as said administrator, and pursuant to due notice and the law in such case provided,

It is ordered, adjudged and decreed, and this court, by virtue of the power and authority vested in the same by law, doth hereby order, adjudge and decree, that all and singular of the above
18 described real and personal estate, and all other the estate of said deceased in the State of Minnesota, be and the same is hereby assigned to and vested in the said Louise M. Matteson, Herbert H. Matteson, Sumner W. Matteson, Charles D. Matteson, Roy G. Matteson, Max Matteson and Claire Louise Matteson, in the following shares and proportions, to wit:

To Louise M. Matteson, one undivided one-third (1/3) of all of said real and personal property, to Herbert H. Matteson, Sumner W. Matteson, Charles D. Matteson, Roy G. Matteson, Max Matteson and Claire Louise Matteson, each one undivided one-ninth (1/9) of all of said real and personal property, without prejudice however to any lawful conveyance of said real estate or any part thereof by said persons or any of them.

To have and to hold the same together with all the heredita-

ments and appurtenances thereunto belonging or in anywise appertaining to the above-named persons and their heirs and assigns forever.

By the court,

[L. S.] G. WILLRICH,
Judge of Probate."

No order or decree has been entered in said probate court discharging the said administrator from its said trust other than the said order allowing its final account and said final decree which are above set out.

Thereafter and on November 21, 1896, said Security Trust Company filed the following petition, which was duly verified on November 20, 1896:

"STATE OF MINNESOTA, } ss:
County of Ramsey, }

In Probate Court.

In the Matter of the Estate of SUMNER W. MATTESON, Deceased.

The petition of Security Trust Company, a corporation, respectfully shows to the court:

First. That it was the duly appointed acting and qualified administrator of the estate of Sumner W. Matteson, deceased.

Second. That on the 27th day of April, 1896, said court made and entered its final decree in said estate, discharging petitioner as administrator, and assigning the property belonging to said estate to the persons by law entitled to the same.

Third. That in drawing said decree certain clerical errors were made, by reason of which parcels of real estate were therein erroneously described, and certain other parcels of real estate were omitted therefrom.

Fourth. That the said erroneous descriptions, with the corresponding proper corrections are as follows:

19 (Errors and corrections are here set out at length in the original petition.)

Fifth. That the parcels and lots of real estate omitted from the said decree as aforesaid are as follows, to wit:

(Here the original petition sets out the particular description of the omitted tracts.)

Wherefore, your petitioner prays that this court make and enter an order amending and correcting the said final decrees by changing the said erroneous descriptions to the proper and correct descriptions, as hereinbefore set forth, and by adding to the said decree the said omitted lots or parcels of real estate.

(Signed) SECURITY TRUST COMPANY,
By EDWARD J. HODGSON, *Pres't.*"

Thereafter and on November 21, 1896, said court made and filed the following order amending said final decree:

"State of Minnesota, } ss:
County of Ramsey, }

In Probate Court.

In the Matter of the Estate of Sumner W. Matteson, Deceased.

On reading and filing the petition of the Security Trust Company in the above-entitled matter, filed therein on the 21st day of November, 1896, and it appearing to my satisfaction that the said petitioner was the duly appointed, acting and qualified administrator of the estate of Sumner W. Matteson, deceased, and that in drawing the final decree made and entered in said above-entitled matter, on the 27th day of April 1896, certain clerical errors made by reason of which certain parcels of real estate were therein erroneously described and certain other parcels of real estate were omitted therefrom, and that the said erroneous descriptions with the corresponding proper corrections are as follows:

(Here the particular errors and corrections are set out.)

And that the said parcels and lots of real estate omitted from the said decree as aforesaid, are as follows, to wit:

The undivided one-eighth (⅛) of the southeast one-quarter (S. E. ¼) of the southeast quarter (S. E. ¼) of section thirty-two (32) township forty-nine (49) range fifteen (15): Also lots four (4) five (5) six (6) and ten (10) in block (1): Lots five (5) six (6) seven (7) and eight (8) in block three (3): Lots eleven (11) and twelve (12) in block fourteen (14) and lot fifteen (15) in block seventeen (17) all of West End addition to Duluth, according to the recorded plat thereof of record and on file in the office of the register of deeds in and for said county of St. Louis.

It is ordered that the said final decree be and the same hereby is amended and corrected by changing the said erroneous descriptions to the correct descriptions, as hereinbefore set forth, and by adding to the said decree the lots and parcels of land omitted therefrom as hereinbefore set forth.

Dated this 21st day of November, A. D. 1896.

[L. S.] G. WILLRICH,
Judge of Probate."

That the major portion of the omitted descriptions were not contained in the inventory filed.

At all times herein and in the pleadings mentioned, Fred S. Easton was the principal stockholder and cashier of the plaintiff bank, and representing it, purchased the said note for it from James H. Easton & Co. He knew that said Sumner W. Matteson was a resident of St. Paul, Minnesota, and several times in 1894 subsequently to the maturity of said notes, he as cashier of said bank wrote to said Sumner W. Matteson, addressing him at St. Paul, Minnesota, urging him to take up said notes.

As early as August 8, 1895, he knew said Sumner W. Matteson had died at St. Paul, Minnesota, a resident of that city. On August

8, 1895, he wrote to S. W. Matteson, Jr. (a son of the deceased) addressing him at said city of St. Paul, the following letter:

DECORAH, IOWA, *Aug. 8th*, 1895.

S. W. Matteson, Jr., St. Paul, Minn.

DEAR SIR: The Black River Nat'l Bank of Lowville, with which I am connected, holds two notes made by S. W. Matteson and endorsed by James H. Easton & Co., which bear date Feb'y 27th, 1894, and each for $2,500, and 8 per cent. interest from date, payable 4 mos. from date, due June 30th, 1894. We endeavored to have them taken up and paid in part, but have not been successful. I have written to your father several times about having them arranged and he replied he would have J. H. E. & Co. attend to the matter. After considerable correspondence, I obtained payment of the interest on the notes to November 24, 1894, and they will still have the principal $5,000 and 8 per cent. interest since Nov. 24, '94, yet unpaid. It was my intention to see your father when I passed thro' St. Paul en route from Duluth here, but it rained very hard and I could not get out but would not have seen him as he was ill at that time. Mr. J. H. Easton advises me that you have made arrangements, or arrangements were made by your father prior to his decease, to raise $6,000 and pay up this paper and other of similar nature. As a national bank we are not permitted to have paper past due and if overdue 6 mos. must be charged off as 'bad debt,' and more than 6 mos. has elapsed since the notes in question matured and we must have them paid. I have requested J. H. E. & Co. to take them up, but they say that they have now more of the same paper than they can take care of, and I must have the maker take up the notes. Our bank discounted the paper a long time ago and our condition is such that the money is necessary for our bank's demands and we have declined to carry it any longer for several months. I would have made my wishes known to you when here, but refrained from so doing under the circumstances which brought you to Decorah.

21

I wish you would make your arrangements to have these notes paid and taken up out of the money which was borrowed by your father for the purpose of reducing this indebtedness. It is over one year since the paper fell due and I have waited patiently for the payment of the same, not desiring to crowd payment, as we had a high regard for your father.

Please write me at earliest opportunity what I may expect in this connection. Would like to hear from you here by early mail, as I do not expect to remain here but a few days.

Yours truly,

F. S. EASTON,
c/o 1st Nat'l Bank, Decorah, Iowa.

Thereafter on October 22, 1895, said Easton as such cashier wrote a letter to Chas. D. Matteson, a son of the deceased, addressed to him in care of the Security Trust Company at St. Paul, Minnesota, urging payment of said notes and stating that unless paid, under instructions from the Comptroller of the Currency the bank would have to

institute suit for collection, or charge them to profit and loss. The letter was written from Lowville, N. Y., on paper of said bank, having the letter-head of the bank printed on it and the name of said Fred S. Easton as cashier a part of the letter-head, and on November 25, 1895, he as such cashier wrote another letter of like import, to said Charles D. Matteson, addressed to him in care of Security Trust Company at said city of St. Paul, which letter was written on like paper of said bank. In each of said letters it was stated that said notes were held and owned by the petitioner bank.

Said Fred S. Easton had not, nor had any officer of said bank, any actual knowledge or information that administration had been taken out in Minnesota on the estate of said deceased, nor that said Security Trust Company had been appointed administrator of said deceased, until December 26th, 1896, and he did not, nor did any officer of said bank, prior to that date make any inquiries from any member of the family of said deceased nor from any officer of said probate court, nor make any examination of the files or records of said court to learn whether administration had been taken out on the
22 estate of said deceased in Minnesota. No steps were ever taken by said bank or by any one in its behalf to file its claim in the said probate court prior to Jan. 4, 1897, nor to commence any action in said State or United States court in the State of Minnesota to prove its claim as a claim against the deceased or to recover an account of any of said notes until January 22, 1897, when it commenced this action.

Said Easton knew that administration had been taken out on the estate of said deceased in Iowa (he having at his death left property in Iowa) and that said Chas. D. Matteson had been appointed administrator of the estate of said deceased in Iowa by the proper Iowa court.

He caused the claim of said bank on said notes to be filed in said Iowa court on August 19, 1896, as a claim against the deceased and supposed that nothing further was necessary to entitle the bank to share in the estate of the deceased wherever situate. Knowing that administration had been commenced in Iowa he supposed that it would not be necessary to administer on the estate of said deceased in any other State, and until December 26, 1896, had no knowledge or information that any administration had been commenced elsewhere than in Iowa.

Said bank caused said notes to be presented to Security Trust Company in January, 1897, before the commencement of this action, and demanded that it pay the same out of the estate of said deceased, and payment was refused. No part of said notes had been paid except as alleged in the petition or declaration.

The Security Trust Company did not at any time make any written assignment or transfer of any of the property, described in said final decree to any person named as a distributee in said final decree, except the certificate of stock of the Duluth Union Land Co. described in said decree of distribution, which stock was on the 23rd day of December, 1896, assigned in writing by said administrator. Such assignment was on December 23, 1896, made on the back of

said certificate and signed "Security Trust Company as administrator of the estate of Sumner W. Matteson, deceased," at the request of said Chas. D. Matteson for the reason that when said Matteson presented said certificate to the secretary of said Duluth Union Land Co. and requested that certificates in lieu thereof should be issued to the distributees named in said final decree said secretary refused to make such transfer unless such assignment should be endorsed on said stock.

But within a few days after said final decree had been made and long before December first, 1896, said Chas. D. Matteson who
23 was secretary and treasurer of Security Trust Company, at all times herein mentioned, and also one of the distributees named in said final decree, removed all securities and papers in possession of said Security Trust Company as such administrator from the files of said Security Trust Company where they had been kept by it as administrator, and placed them in a box or receptacle which he kept, and for long before that time had kept in the vault of said company for his personal papers, and papers in his personal possession, except certain stocks and securities which Security Trust Company as collateral security for indebtedness owed to it by said Sumner W. Matteson held prior to his death, and which it has continued to hold as such collateral to the present time, such indebtedness still remaining unpaid. The book in which the Security Trust Company kept entries of the proceedings in the probate of said estate, was in the usual course of business, shortly after the entry of said final decree, and long before December 1, 1896, written up, and the following entries made after the printed words on the page of said book containing entries relative to said estate viz:

Application for discharge (in print). March 31, 1896, (in writing.)
Discharged (in print) April 27, 1896, (in writing.)

Red-ink line followed on the page so ruled as to leave no space for further entries on said page.

The cash on hand at the time of filing the final account was paid out by Security Trust Company under directions from said Chas. D. Matteson for taxes and other expenses relating to property of said distributees, and early in June, 1896, it paid to said Chas. D. Matteson by its check, a balance of less than fifty dollars which remained unexpended according to the account kept on its books in which account was entered the moneys it had received and disbursed as such administrator, and said account was then closed out on its books. All such properties thereafter remained in the said private receptacle of said Chas. D. Matteson except as he may have delivered them to persons other than Security Trust Company, and written assignments and conveyances of all the said property were made by the distributees to the Matteson estate incorporate (a corporation organized under the laws of Minnesota) prior to December 15, 1896.

On November 19, 1895, Security Trust Company as such administrator entered into written contract with James H. Easton relative to the respective rights and liabilities of said James H. Easton and said deceased growing out of certain notes or obligations
24 therein particularly described, among which the notes in the

complaint were specifically described but it was stated in said contract that they were held by Fred S. Easton.

That on the 6th day of April, 1896, Warner, Richardson & Lawrence filed in said court their duly verified claim against said estate, amounting to one hundred nine and 20/100 dollars ($109.20) on which claim is endorsed in the handwriting of Charles D. Matteson the following:

"We hereby allow the within claim this 20th day of May, '96. Security Trust Co., by Chas. D. Matteson, sec'y," and which said claim was thereafter paid in full.

That on January 4, 1897, a duly verified petition was made and presented to said probate court by said Black River national bank, stating in detail the claim of said bank against said estate and also stating that said bank had no knowledge or information of any proceedings in said probate court in said estate until December 26, 1896, and praying leave to file its claim in said court against said estate, and praying that decree of distribution be vacated and said claim as allowed be paid out of the assets of said estate. That such proceedings were thereafter had that said court issued an order to said administrator and all persons named in said decree of distribution to show cause why said petition should not be granted, which order was served as prescribed in said order; and thereafter said court dismissed said order to show cause and denied said petition.

Said administrator did not notify said Fred S. Easton, nor said petitioner bank, of the said order to file claims except by publication of said order as above stated and did not at any time notify said Fred S. Easton, nor said petitioner bank of the commencement of, or of the pendency of said probate proceedings except by publication of the notices required by statute.

Edward J. Hodgson and Chas. D. Matteson were respectively president and secretary and treasurer of said Security Trust Company at all time herein mentioned and they had exclusive supervision and management of said administration for said company, but said Chas. D. Matteson principally attended to all the details thereof.

Said deceased resided in the State of Iowa until November, 1891 and from that date until his death at St. Paul, Minnesota.

Said Chas. D. Matteson was appointed administrator of the estate in Iowa by said Iowa court above mentioned in September, 1895.

STRINGER & SEYMOUR,
Attorneys for Plaintiff.
EDMUND S. DURMENT,
For Defendant.

Jan. 16, 1899.

25 Stipulation of facts, waiver of trial by jury. Filed, January 18th, 1899. Henry D. Lang, clerk.

Thereafter and on the 17th day of April, 1899, the following findings and order for judgment was filed in the clerk's office of said court in words and figures following, to wit:

Circuit Court of the United States, District of Minnesota, Third Division.

BLACK RIVER NATIONAL BANK OF LOWVILLE
vs.
THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased.

This case being regularly on the docket, came on for hearing at the January A. D. 1899, term of this court holden at St. Paul, in said third division of said district; and trial by jury having been duly waived by the respective parties it was tried by the court without a jury on Wednesday, April 5, 1899, in said term, the plaintiff appearing by Stringer and Seymour, its attorneys, and the defendant by E. S. Durment its attorney. And now having heard the arguments of counsel for the respective parties, and duly considered the pleadings and the stipulation of facts presented and received in evidence, it is found by the court that the plaintiff, The Black River National Bank of Lowville is entitled to recover of the defendant The Security Trust Company of St. Paul, as administrator of the estate of Sumner W. Matteson, deceased, the amount claimed by said plaintiff in its complaint herein with costs, to be paid and enforced out of the property and effects of the intestate Sumner W. Matteson, deceased; said judgment to be duly certified by this court to the probate court of Ramsey county, Minnesota, as a claim duly proved, established and allowed against the said estate of Sumner W. Matteson, deceased.

The clerk will from said complaint compute the amount which the plaintiff is, at the date hereof, entitled to recover under this finding, and enter judgment accordingly.

April 15, 1899.

WM. LOCHREN, *Judge*.

Findings and order for judgment. Filed, April 17, 1899. Henry D. Lang, clerk.

Thereafter and on the 17th day of April, 1899, the following stipulation as to costs was filed in the clerk's office of said court in words and figures following, to wit:

26 Circuit Court of the United States, District of Minnesota, Third Division.

BLACK RIVER NATIONAL BANK OF LOWVILLE, Plaintiff,
vs.
THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased, Defendant.

Plaintiff's Costs and Disbursements.

Docket fee	$10.00
U. S. marshal's fee	2.06
Clerk's fees, to be added, plaintiff's fees	11.95
	$24.01

It is hereby stipulated and agreed that the foregoing costs may be taxed and allowed by the clerk of said court and inserted in the judgment in the above-entitled cause (with*in*) further notice.

EDMUND S. DURMENT,
Attorney for Defendant.
STRINGER & SEYMOUR,
Attorney for Plaintiff.

Stipulation as to costs. Filed April 17, 1899. Henry D. Lang, clerk.

And thereafter on the same day the following order was entered of record in said cause, (judgment for plaintiff) in words and figures following, to wit:

United States Circuit Court for the District of Minnesota.

Term Minutes, January Term, A. D. 1899.

APRIL 17TH, 1899.

BLACK RIVER NATIONAL BANK OF LOWVILLE
vs.
THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased. } E. Law 1165.

This cause having been heretofore tried by the court without a jury and the court having this day filed its findings.

Therefore it is considered, ordered and adjudged, in accordance therewith, that the plaintiff herein Black River National Bank of Lowville, do have and recover of — from the defendant The Security Trust Company of St. Paul as administrator of the estate of Sumner W. Matteson, deceased, the sum of six thousand seven hundred and fifty-eight dollars and eighty-eight cents ($6,758.88) the amount claimed in the complaint with interest to this date, together
27 with the sum of twenty-four dollars and one cent ($24.01) the cost which the plaintiff is entitled to recover in this action in accordance with a stipulation duly signed by the attorneys for the respective parties herein and this day filed, amounting in the aggregate to the sum of six thousand, seven hundred eighty-two dollars and eighty-nine cents ($6,782.89) and that said sum be paid and enforced out of the property and effects of the intestate Sumner W. Matteson, deceased.

Ordered further that this judgment be duly certified by this court to the probate court of Ramsey county as a claim duly approved, established and allowed against the estate of Sumner W. Matteson, deceased.

Judgment-roll, signed this 17th day of April, A. D. 1899.

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy.*

Damages	$6,758.88
Costs	24.01
Total	$6,782.89

Judgment-roll. Filed April 17th, 1899. Henry D. Lang, clerk. By Louise B. Trott, deputy.

Thereafter and on October 14th, 1899, the following assignment of errors was filed in said cause, to wit:

Circuit Court of the United States, District of Minnesota, Third Division.

BLACK RIVER NATIONAL BANK OF LOWVILLE, Petitioner,
vs.
SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased, Defendant.

The defendant in the above-entitled action says that in the record and proceedings in said action, and also in the rendering of the judgment therein, there is manifest error in the particulars hereinafter specified, and assigns as error committed by the court in the trial of said cause for which it asks a reversal on error, the following:

1. The court erred in granting judgment in favor of the petitioner on the pleadings and the agreed facts stipulated by the parties and spread upon the records.

2. The court erred in not ordering judgment on the pleadings and agreed facts stipulated by the parties and spread upon the records in favor of the defendant.

3. The judgment is not supported by the facts so stipulated and agreed upon in writing and filed and spread upon the records in said action.

28 4. The pleadings and the facts therein set forth and the agreed facts stipulated and filed in said action and spread upon the records (upon which said judgment is based) are not sufficient to authorize the entry of said judgment or to support the judgment so rendered and entered.

5. The agreed facts stipulated in writing and filed in said action and spread upon the records are not sufficient to authorize the entry of said judgment or to support the said judgment so rendered and entered.

Wherefore the said defendant, the plaintiff in error, prays that said judgment be reversed.

EDMUND S. DURMENT,
Attorney for Defendant, Plaintiff in Error.

Assignment of errors. Filed, October 14th, 1899. Henry D. Lang, clerk.

And on the same day the following bond of appeal was filed in said cause, to wit:

Circuit Court of the United States, District of Minnesota, Third Division.

BLACK RIVER NATIONAL BANK OF LOWVILLE, Petitioner,
vs.
SECURITY TRUST COMPANY, as Administrator of the Estate of Sumner W. Matteson, Deceased, Defendant.

Know all men by these presents, that we, Security Trust Company defendant in the above-entitled action, as principal, and C. E. Dickerson and Chas. D. Matteson as sureties, are held and firmly bound unto Black River National Bank of Lowville, the plaintiff in the above-entitled action, in the sum of three hundred dollars lawful money of the United States to be paid unto the said plaintiff, its successors or assigns, for which payment well and truly to be made we jointly and severally bind ourselves, and the successors of said Security Trust Company, and the heirs, executors and administrators of the said sureties firmly by these presents.

Sealed with our seals and dated this 14th day of October, A. D. 1899.

The condition of this obligation is such, that whereas, a final judgment was rendered and entered in the above-entitled action in favor of the plaintiff and against the said defendant on the 17th day of April, 1899, and the said defendant has duly made an assignment of errors and is about to apply for a writ of error to issue in said court in order that said judgment and the records and proceedings in said suit may be reviewed and examined in the United States circuit court of appeals for the eighth judicial circuit:

29 Now therefore, if said writ of error shall be allowed and said defendant shall prosecute its writ to effect, and if it fail to make its plea good, shall answer all costs, then this obligation shall be void, otherwise of force.

In witness whereof the said defendant has caused this bond to be executed in its corporate name and its corporate seal to be hereto affixed, and the said sureties have hereto set their hands and seals this 14th day of October, A. D. 1899.

SECURITY TRUST COMPANY,
By EDWARD J. HODGSON, *President, and*
CHAS. D. MATTESON, *Secretary.*
C. E. DICKERSON. [SEAL.]
CHAS. D. MATTESON. [SEAL.]

Signed and sealed in presence of
W. J. DESMOND.
H. A. PRESLER.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

On this 14th day of October, A. D. 1899, came before me personally Edward J. Hodgson, president, and Charles D. Matteson, secretary of said Security Trust Company, to me well known, and who

being by me severally duly sworn on oath did say, that he the said Edward J. Hodgson is the president, and the said Chas. D. Matteson, is the secretary of said Security Trust Company, a corporation and that the foregoing bond was executed by said Security Trust Company by authority of its board of directors, and that the seal thereto affixed is the corporate seal of said corporation, and each acknowledged the same to be the free act and deed of said corporation.

And at the same time and place before me personally appeared C. E. Dickerson and Chas. D. Matteson two of the persons who executed the foregoing bond as sureties thereon to me personally known to be the same persons described in and who executed the same as sureties, and each severally acknowledged the same to be his own free act and deed.

Witness my hand and official seal this 14th day of October, A. D. 1899.

[NOTARIAL SEAL.] W. J. DESMOND,
Notary Public, Ramsey County, Minnesota.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

On this 14th day of October A. D. 1899, came before me personally C. E. Dickerson and Chas. D. Matteson and being by me severally duly sworn each for himself doth depose and say, that he is the surety above named, and a resident and freeholder of the State of Minnesota, and worth the sum of six hundred dollars ($600) over and above his debts and liabilities, and exclusive of his property exempt by law from execution.

C. E. DICKERSON.
CHAS. D. MATTESON.

Subscribed and sworn to before me on this 14th day of October A. D. 1891.

[NOTARIAL SEAL.] W. J. DESMOND,
Notary Public, Ramsey County, Minnesota.

Bond on Appeal.

I hereby approve of the within bond and the sureties thereon, dated October 14th, 1899.

WALTER H. SANBORN,
Circuit Judge.

Filed October 14th, 1899.

HENRY D. LANG, *Clerk.*

And on the same day the following petition for writ (or) errors was filed in said cause, to wit:

Circuit Court of the United States, District of Minnesota, Third Division.

BLACK RIVER NATIONAL BANK OF LOWVILLE, Petitioner,
vs.
SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased, Defendant.

Now comes the defendant above named and says, that on the 17th day of April, 1899, the above-entitled court entered judgment, in the above-entitled action in favor of the plaintiff against the defendant, which judgment was on the merits and is a final judgment, and in which judgment and proceedings prior thereto in said action, certain errors were committed to the prejudice of the said defendant, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore the said defendant prays that a writ of error may issue in this behalf to the United States circuit court of appeals for the eighth circuit for the correction of the errors so complained of, and that a transcript of the records, proceedings and papers in said cause, duly authenticated, may be sent to said circuit court of appeals.

EDMUND S. DURMENT,
Attorney for Defendant.

Writ of error is allowed as prayed for in the foregoing petition, on this 14th day of October, 1899.

WALTER H. SANBORN,
Circuit Judge for the United States Circuit Court for the District of Minnesota, Third Division.

31 Petition for writ of error. Filed October 14th, 1899. Henry D. Lang, clerk.

And thereafter and on the same day the following writ of errors was issued in said cause, to wit:

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the circuit — of the United States for the district of Minnesota, third division, Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, at the January term, 1899, thereof, between Black River National Bank of Lowville, plaintiff, and Security Trust Company of St. Paul, as administrator of the estate of Sumner W. Matteson, deceased, defendant, a manifest error hath happened, to the great damage of the said Security Trust Company of St. Paul, as administrator of the estate of Sumner W. Matteson, deceased, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to

the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States circuit court of appeals for the eighth circuit, together with this writ, so that you have the said record and proceedings aforesaid at the city of St. Louis, Missouri, and filed in the office of the clerk of the United States circuit court of appeals, for the eighth circuit, on or before the 12th day of December, A. D. 1899, to the end that the record and proceedings aforesaid, being inspected, the United States circuit court of appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Seal U. S. Circuit Court, Dist. of Minnesota, Third Division.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this fourteenth day of October A. D. 1899. Issued at office in St. Paul, Minnesota, with the seal of the circuit court of the United States for the district of Minnesota, third division.

HENRY D. LANG,
Clerk of the Circuit Court of the United States of America for the District of Minnesota.

Allowed by—
WALTER H. SANBORN, *Judge.*

32 UNITED STATES OF AMERICA, } ss:
District of Minnesota, Third Division, }

In obedience to the command of the within writ, I herewith transmit to the United States circuit court of appeals, a duly certified transcript of the record and proceedings in the within-entitled cause, with all things concerning the same.

Seal U. S. Circuit Court, Dist. of Minnesota, Third Division.

In witness whereof, I hereto subscribe my name and affix the seal of the circuit court of the United States for the district of Minnesota, third division.

HENRY D. LANG,
Clerk of the Circuit Court of the United States of America for the District of Minnesota.

Entered 1165. E. law. Filed October 14th, 1899. Henry D. Lang, clerk.

And thereafter, and on the same day the following citation was issued and returned on the 16th day of October, 1899, with due proof of service thereon, to wit:

The United States of America to Black River National Bank of Lowville:

You are hereby cited and admonished to appear in the United States circuit court of appeals for the eighth circuit at the city of St.

Louis, Missouri, on the 12 day of December A. D. 1899, pursuant to a writ of error filed in the office of the clerk of the United States circuit court for the district of Minnesota, third division, wherein Security Trust Company (defendant in an action brought by you against Security Trust Company, as administrator of the estate of Sumner W. Matteson, deceased), is plaintiff in error, and you are defendant in error, and show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Walter H. Sanborn, judge of said circuit court this 14 day of October, A. D. 1899.

WALTER H. SANBORN,
Judge of United States Circuit Court,
Eighth Judicial Circuit.

Entered 1165 E. law. United States circuit court, district of Minnesota. Third division. Black River National Bank of Lowville, petitioner, *vs.* Security Trust Company, as administrator, etc., defendant. Citation. Due service of the within citation is hereby admitted Oct. 16, 1899. Stringer & Seymour, (Edward
33 C. Stringer, McNeil V. Seymour), attorneys for plaintiff. Filed October 16th, 1899. Henry D. Lang, clerk.

UNITED STATES OF AMERICA:

Circuit Court of the United States, District of Minnesota, Third Division.

I, Henry D. Lang, clerk of said circuit court, do hereby certify and return to the honorable, the United States circuit court of appeals for eighth circuit, that the foregoing, consisting of 58 pages, numbered consecutively from 1 to 58, inclusive, is a true and complete transcript of the records, process, pleadings, orders, final judgment and all other proceedings in said cause, and of the whole thereof, as appears from the original records and files of said court; and I do further certify and return, that I have annexed to said transcript, and included within said paging, the original citation, together with the proof of service thereof.

Seal U. S. Circuit Court, Dist. of Minnesota, Third Division.

In witness whereof, I have hereunto set my hand, and affixed the seal of said court, at Saint Paul, in the district of Minnesota, this 9th day of November, A. D. 1899.

HENRY D. LANG, *Clerk.*

(Cancelled 10c. U. S. rev. stamp.)

Filed Nov. 16, 1899.

JOHN D. JORDAN, *Clerk.*

34 (*Appearance for Plaintiff in Error.*)

And on the sixteenth day of November, A. D. 1899, an appearance of counsel for plaintiff in error was filed in the clerk's office of

said circuit court of appeals, in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1899.

THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased, Plaintiff in Error,
vs.
BLACK RIVER NATIONAL BANK OF LOWVILLE. } No. 1356.

The clerk will enter our appearance as counsel for the plaintiff in error.

EDMUND S. DURMENT.
ALBERT R. MOORE.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. May term, 1899. No. 1356. The Security Trust Co., as adm. of the estate of Sumner W. Matteson, dec., pl'ff in error, *vs.* Black River National Bank of Lowville. Appearance. Filed Nov. 16, 1899. John D. Jordan, clerk. Edmund S. Durment, Albert R. Moore, counsel for plaintiff in error.

(*Appearance for Defendant in Error.*)

And on the sixth day of February, A. D. 1900, an appearance of counsel for defendant in error was filed in the clerk's office of said circuit court of appeals, in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1900.

35 SECURITY TRUST COMPANY, as Administrator, etc., Plaintiff in Error,
vs.
BLACK RIVER NATIONAL BANK OF LOWVILLE. } No. 1356.

The clerk will enter my appearance as counsel for the defendant in error.

EDWARD C. STRINGER.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. May term, 1900. No. 1356. Security Trust Company, as administrator, etc., plaintiff in error, *vs.* Black River National Bank of Lowville. Appearance. Filed Feb. 6, 1900. John D. Jordan, clerk. Edward C. Stringer, counsel for def't in error.

(*Order of Submission.*)

And on the fourteenth day of May, A. D. 1900, in the record of the proceedings of said circuit court of appeals is an order of submission of said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1900.

MONDAY, *May* 14, 1900.

THE SECURITY TRUST COMPANY, as Administrator, etc., Plaintiff in Error,
vs.
THE BLACK RIVER NATIONAL BANK OF LOWVILLE. } No. 1356.

In error to the circuit court of the United States for the district of Minnesota.

This cause having been called for hearing in its regular order, argument was commenced by Mr. E. S. Durment for plaintiff in error, continued by Mr. E. C. Stringer for defendant in error, and concluded by Mr. E. S. Durment for plaintiff in error.

Thereupon this cause was submitted to the court on the transcript of record from said circuit court and the briefs of counsel filed herein.

(*Opinion.*)

And on the seventeenth day of October, A. D. 1900, an opinion of said United States circuit court of appeals was filed in said cause, in the following words, to wit:

36 United States Circuit Court of Appeals, Eighth Circuit, May Term, A. D. 1900.

SECURITY TRUST COMPANY, as Administrator of the Estate of Sumner W. Matteson, Deceased, Plaintiff in Error,
vs.
BLACK RIVER NATIONAL BANK OF LOWVILLE, Defendant in Error. } No. 1356. In Error to the Circuit Court of the United States for the District of Minnesota.

Mr. Edmund S. Durment, (Mr. Albert E. Moore was with him on the brief) for the plaintiff in error.

Mr. Edward C. Stringer (Mr. McNeil V. Seymour was with him on the brief) for the defendant in error.

Before Caldwell, Sanborn, and Thayer, circuit judges.

THAYER, *Circuit Judge:*

This case involves the same questions which were considered and decided in the case of Security Trust Company, as administrator of Sumner W. Matteson, deceased, *vs.* William H. Dent, as receiver of the First National Bank of Decorah. The judgment below is accordingly affirmed on the authority of that case.

Filed October 17, 1900.

37 (*Judgment.*)

And on the seventeenth day of October, A. D. 1900, in the record of the proceedings of said circuit court of appeals is a judgment in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1900.

WEDNESDAY, *October* 17, 1900.

THE SECURITY TRUST COMPANY, as Administrator of the Estate of Sumner W. Matteson, Deceased, Plaintiff in Error,
vs.
THE BLACK RIVER NATIONAL BANK OF LOWVILLE. } No. 1356.

In error to the circuit court of the United States for the district of Minnesota.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Minnesota, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said circuit court, in this cause, be, and the same is hereby, affirmed with costs; and that the Black River National Bank of Lowville have and recover against the Security Trust Company, as administrator of the estate of Sumner W. Matteson, deceased, the sum of twenty dollars for its costs herein.

October 17, 1900.

(*Petition for Rehearing.*)

And on the twenty-eighth day of November, A. D. 1900, a petition for rehearing was filed in the clerk's office of said circuit court of appeals, in said cause, in the words and figures following, to wit:

38 United States Circuit Court of Appeals, Eighth Circuit.

SECURITY TRUST COMPANY, as Administrator of the Estate of Sumner W. Matteson, Deceased, Plaintiff in Error,
vs.
BLACK RIVER NATIONAL BANK OF LOWVILLE, Defendant in Error. } No. 1356.

The plaintiff in error respectfully asks that a reargument of the above-entitled cause be granted as to the propositions, and for the reasons, following:

1. The proposition that the final settlement and distribution in the probate court barred the action in the Federal court.

Even admitting, as said in your opinion, that the Federal
39 court must be conceded the same power, as respects a claim of a non-resident creditor, to allow it within eighteen months,

which is conferred on probate courts of the State, the result of your decision affirming the judgment of the circuit court does not follow. Your decision claims for the Federal courts other and greater rights in that respect than the probate court has. Under the statute (cited in your opinion) the probate court has authority to allow the claim, only prior to final settlement and within eighteen months. It was conceded on the argument, is not denied in your opinion, and we think clearly is true, that at the time the action was commenced in the circuit court, the probate court, because of the final settlement of the estate, was without power to allow the claim had it been presented in that court. The indebtedness was incurred by the deceased, while a resident of Minnesota, and while the present statutory provisions as to the disposition of his property in case of death were in force. The plaintiff's right against the estate of the decedent in Minnesota must depend on the law of Minnesota. How, then, can it be that the Federal court can allow a claim against that property which neither the State court of probate, nor any other State court, had power to allow in case the plaintiff had resorted to it?

To say that the right of a non-resident creditor to sue in the Federal court cannot be made to depend on the length of time a probate court happens to allow for making a final settlement, or the time a local court chances to approve a final settlement,
40 when the time rests in the discretion of the court and is largely a matter of convenience, leaves out of consideration several important things. That possibly would be true, if by the statute it were made wholly a matter of discretion of the local court, but not when the statute gives absolutely a reasonable time for commencing suit, and confines the exercise of discretion to a period after the expiration of the reasonable time fixed by the statute. By the statute six months within which to sue is given absolutely. The court has no discretion to shorten the time. But, that the statute makes the right of the creditor to share in the estate after the lapse of the fixed reasonable time conditional upon his claim being presented while the property is yet in the control of the probate court, cannot be so objectionable as to warrant the court in disregarding the condition and thus confer a right which the statute in plain terms denies. Such provision is absolutely essential to practical administration of the estates of deceased persons.

We submit, also, that the court has failed to give due consideration to the nature and object of administration proceedings. The entire property of the decedent is in the possession of the probate court for the purpose of distribution. The suit to establish the claim is ancillary, in aid of the administration proceeding. It is a suit in fact (though not in form) against the property, for the purpose of determining whether it is one entitled to share in the distribution.

The probate court has sole jurisdiction to make the distribu-
41 tion and to determine when it shall be made. When lawfully it has once made the distribution there no longer can be any right to share in the distribution. This distribution, made after notice to the world, is binding on the world (including the

Federal courts) because it is a decree *in rem* disposing of property in possession of the court.

The effect of your decision is to deny the right of the State to provide for the administration of the estates of its deceased citizens within the State, for, if it cannot authorize its courts to determine when an estate has been fully administered and to distribute it free from claims it is without power to administer.

2. The proposition that the decree of distribution and the settlement of the final account did end the administration and divest the probate court of jurisdiction.

Your opinion on this proposition:

1. Fails to give credit to the final decree (a judgment of a court of competent jurisdiction) which declares that the estate has been fully administered, and assigns not only the property particularly described, but also "all other the property of the deceased, in the State of Minnesota."

2. Erroneously* assumes that the probate court in amending the final decree assumed that its jurisdiction to administer the estate still continued. It simply corrected its records pursuant to authority, given in Gen. St. 1894, sec. 4730, to correct or amend its records at any time. Being a court of record it had the right to do
42 so even in the absence of the statute. (Black on Judgments, vol. 1, sec. 161.) In doing so it did not exercise any jurisdiction in the probate or administration of the estate. It simply exercised a right to make its record conform to the facts. It added nothing to its final decree, and took no step in the administration, but simply particularized the property theretofore assigned as "all other the property of the deceased, in the State of Minnesota."

3. Refuses to give credit to the decisions of the supreme court of Minnesota, in that it erroneously assumes that the jurisdiction of the probate court continued for the purpose of enforcing its order of distribution, when in fact it is settled in this State that the probate court has no jurisdiction to enforce its order of distribution. See 61 Minn. 91, Schmidt *v.* Stark: "The effect of a decree of distribution is to transfer the title to the personalty and the right of possession of the realty from the personal representative to the distributees, devisees, or heirs. The property then ceases to be the estate of the deceased person, and becomes the individual property of the distributees, with the full right of control and possession, and with the right of action for it against the personal representative if he does not deliver it to them. If such an action is necessary, resort must be had to some other forum, for the probate court has no further jurisdiction. Hurley *v.* Hamilton, 37 Minn. 160, 33 N. W. 912; Gary Probate Law, secs. 48, 612*b*, 629, 633."

43 While the decision in the case is of importance to the parties directly interested, it is of much greater moment. It is so

* That the probate court did not understand that it had any further jurisdiction is shown by the fact (not shown in the record, but true) that before bringing suit in the circuit court the Black River national bank applied to the probate court to have the decree of distribution vacated and for leave to file its claim, and the application was denied on the ground that the court no longer had jurisdiction.

contrary to what has been the general understanding in Minnesota of the Minnesota law, and to us seems so inevitably to lead to widespread confusion and litigation in this State, as to require us to apply for a reargument of the case, and to warrant the court in granting the application.

EDMUND S. DURMENT AND
ALBERT R. MOORE,
Attorneys for Plaintiff in Error.

I have examined the opinion handed down in the foregoing entitled action and the briefs of counsel, as well as the record. I am of opinion that there ought to be a reargument of the case on the propositions stated in the foregoing petition and for the reasons therein stated. Said petition is made in good faith and on the advice of the undersigned.

EDMUND S. DURMENT,
Of Counsel for Plaintiff in Error.

(Endorsed:) Petition for reargument. Filed Nov. 28, 1900. John D. Jordan, clerk.

41 (*Order Denying Petition for Rehearing.*)

And on the seventeenth day of December, A. D. 1900, in the record of the proceedings of said circuit court of appeals, is an order denying the petition for rehearing, in words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1900.

MONDAY, *December* 17, 1900.

THE SECURITY TRUST COMPANY, as Administrator, etc., Plaintiff in Error,
vs.
THE BLACK RIVER NATIONAL BANK OF LOWVILLE. } No. 1356.

In error to the circuit court of the United States for the district of Minnesota.

This cause came on this day to be heard upon the petition for a rehearing filed by counsel for the plaintiff in error.

On consideration whereof, it is now here ordered by this court, that said petition for a rehearing of this cause be, and the same is hereby denied.

December 17, 1900.

(*Order Staying Mandate.*)

And on the twenty-first day of December, A. D. 1900, in the record of the proceedings of said circuit court of appeals, is an order staying mandate in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1900.

FRIDAY, *December* 21, 1900.

SECURITY TRUST COMPANY, Administrator, etc., Plaintiff in Error,
vs.
BLACK RIVER NATIONAL BANK. } No. 1356.

In error to the circuit court of the United States for the district of Minnesota.

For good cause shown and on application of counsel for plaintiff in error,

It is now here ordered that the mandate in this cause be, and the same is hereby stayed for a period of thirty days from this
45 date pending an application to the Supreme Court of the United States by counsel for plaintiff in error for a writ of certiorari in the above-entitled cause.

December 21, 1900.

46 (*Clerk's Certificate to Transcript.*)

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing forty-five pages contain full, true and complete copies of all the pleadings, proceedings and record entries, including the opinion of said circuit court of appeals, in the case of Security Trust Company, as administrator of the estate of Sumner W. Matteson, deceased, plaintiff in error, *vs.* The Black River National Bank of Lowville, No. 1356, May term, 1900, as full true and complete as the same remain on file and of record in my office.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of St. Louis, Missouri, in the eighth circuit, this third day of January, A. D. 1901.

Seal United States Circuit Court of Appeals, Eighth Circuit.

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

46½ [Endorsed:] File No. 18,025. U. S. C. C. of appeals, 8th circuit. Term No. 232. The Security Trust Company as administrator of the estate of Sumner W. Matteson dec'd, petitioner —*vs.* The Black River National Bank of Louisville—Filed January 17, 1901.

47 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the eighth circuit, Greeting:

Being informed that there is now pending before you a suit in which The Security Trust Company as administrator of the estate of Sumner W. Matteson, deceased, is plaintiff in error, and The Black River National Bank of Lowville, is defendant in error, which suit was removed into the said circuit court of appeals by virtue of a writ of error to the circuit court of the United States for the district of Minnesota, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into
48 the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the seventh day of March, in the year of our Lord one thousand nine hundred and one.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

United States Circuit Court of Appeals, Eighth Circuit.

SECURITY TRUST COMPANY, as Administrator of the Estate of Sumner W. Matteson, Deceased, Plaintiff in Error,
vs.
BLACK RIVER NATIONAL BANK OF LOWVILLE, Defendant in Error.
} No. 1356.

It is hereby stipulated by and between the parties to the above-entitled action that the certified copy of the transcript of the record in the above-entitled action heretofore filed in the office of the clerk of the Supreme Court of the United States at Washington, D. C., upon an application made to that court for a writ of certiorari in said cause, may be taken as a return to the said writ which has heretofore been granted and allowed by said court.

Dated at St. Paul, Minnesota, this 20th day of March, A. D. 1901.

EDMUND S. DURMENT AND
ALBERT R. MOORE,
Attorneys for Plaintiff in Error.
EDWARD C. STRINGER AND
McNEIL V. SEYMOUR,
Attorneys for Defendant in Error.

(Endorsed:) United States circuit court of appeals, eighth circuit. No. 1356. Security Trust Company, as adm'r, etc., plaintiff in error, *vs.* Black River National Bank of Lowville, defendant in error. Stipulation. Filed Mar. 22, 1901. John D. Jordan, clerk. Durment & Moore, attorneys and counselors at law, 616–619 Germania Life Ins. bldg., St. Paul, Minn.

49 [Endorsed:] File No. 18,025. Supreme Court of the United States. No. 232, October term, 1901. The Security Trust Co., administrator &c., *vs.* The Black River Nat'l Bank of Lowville. Writ of certiorari and return. Office Supreme Court U. S. Filed Mar. 25, 1901. James H. McKenney, clerk.

Return to Writ.

UNITED STATES OF AMERICA, } ss:
Eighth Circuit, }

In obedience to the command of the within writ of certiorari and in pursuance of the stipulation of the parties, a full, true and complete copy of which is hereto attached, I hereby certify that the transcript of record furnished with the application for a writ of certiorari in the case of The Security Trust Company as administrator of the estate of Sumner W. Matteson, deceased, plaintiff in error, *vs.* The Black River National Bank of Lowville, is a full, true and complete transcript of all the pleadings, proceedings and record entries in said cause.

Seal United States Circuit Court of Appeals, Eighth Circuit.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States circuit court of appeals for the eighth circuit, at office in St. Louis, Missouri, this twenty-second day of March, A. D. 1901.

JOHN D. JORDAN,
Clerk United States Circuit Court of Appeals for the Eighth Circuit.

FILED
JAN 17 1901
JAMES H. McKENNEY,
Clerk

Supreme Court of the United States.

SECURITY TRUST COMPANY, Administrator, Etc.,

Plaintiff in Error and Petitioner,

vs.

BLACK RIVER NATIONAL BANK OF LOWVILLE,

Defendant in Error.

PETITION AND NOTICE ON APPLICATION FOR WRIT OF CERTIORARI.

EDMUND S. DURMENT,
ALBERT R. MOORE,
Attorneys for Petitioner.

United States Circuit Court Of Appeals.

Eighth Circuit.

SECURITY TRUST COMPANY, Administrator, Etc.,

Plaintiff in Error,

vs.

BLACK RIVER NATIONAL BANK OF LOWVILLE,

Defendant in Error.

The petitioner respectfully shows to the court:

In Minnesota, Probate Courts are courts of record, by the constitution of the state given exclusive jurisdiction of the estates of deceased persons. The legislature has adopted a Probate Code providing for the administration of the estates of deceased persons in that court. It provides that the court,

on issuing letters testamentary or of administration shall make an order limiting the time within which claims against the deceased shall be presented to that court for examination and allowance, which time shall not be less than six months nor more than one year from the date of the order; also that no claim or demand shall be received after the expiration of the time so limited, unless for good cause shown the court may in its discretion receive, hear and allow such claim, but no claim shall be received or allowed unless presented within one year and six months from the publication of the order and before final settlement.

The statute also provides for three weeks publication of the order, and provides that all claims arising on contract must be presented to the Probate Court within the time limited in such order, and that any claim not so presented is barred forever. The order in which claims shall be paid is fixed by statute, and provision is made for appropriating all the property, real and personal, if necessary, to pay debts.

Statute also provides that "when the estate is *fully administered*, the executor or administrator shall petition the Probate Court for an order fixing a time and place in which it will examine, settle and allow the final account of the executor or administrator, and for the assignment of the residue of the estate to the persons entitled thereto by law."

The final account must be filed with the petition, and the order for the hearing must be published for three weeks. The court is required, if on ex-

amination the account is found just and correct to *allow and settle the same*, and upon satisfactory evidence to determine the rights of the persons to the residue of the estate, make a decree accordingly assigning said residue to the persons entitled thereto by law, and such persons are authorized to demand and recover their respective shares from the executor or administrator, or any other person having the same.

It is settled by the Supreme Court of the state of Minnesota.

1. That a failure to present such claim to the Probate Court is a complete bar—not only as against the estate as such, but also as against persons taking under the decree of distribution.

2. That the making of such decree of distribution operates to transfer the title to the personal property and right of possession of the real property to the persons named in the decree of distribution.

3. That the Probate Court is empowered to make but one decree of distribution and that only after the estate has been fully administered.

4. That when the decree of distribution has been made there is no longer any estate of the decease and the jurisdiction of the Probate Court is at an end; that the Probate Court does not retain jurisdiction even to enforce distribution in accordance with the decree, but resort must be had to another court to obtain possession if it be withheld

from the persons to whom it is decreed in the decree of distribution.

The statutes do not in terms provide for the discharge of an administrator, but seem to contemplate that the settlement and allowance of the final account and the entry of the decree of distribution shall have that effect. The Supreme Court of Minnesota has held that no formal order in terms discharging an administrator or executor is necessary, but that any action by the court showing the intent to close the administration is sufficient.

The Probate Court is also authorized, at any time, to correct its records.

The statutes of the state provide that no action shall be commenced in any *state court* to recover on any such claim as above mentioned, but gives a right of appeal from the Probate Court to the District Court from the disallowance of the claim.

All the provisions above mentioned have been in force since long prior to the year 1894.

Sumner W. Matteson was a citizen of Minnesota, residing in Ramsey County, from prior to the year 1894, and died intestate in said county in July, 1895, leaving real and personal property in that county and elsewhere in the state of Minnesota. His estate was duly probated in the Probate Court of that county, this petitioner being appointed administrator. An order was duly made and published limiting the time within which to present claims against the estate to six months. The time fixed expired, the estate was fully ad-

ministered and after notice as required by statute the administrator's final account was settled and allowed and a final decree of distribution duly entered on April 27, 1896, distributing all the estate of the deceased in Minnesota, and the estate was distributed in accordance with the decree of distribution.

The Black River National Bank of Lowville, N. Y., held certain notes of the deceased executed in 1894. The officers of the bank knew as early as August, 1895, that the deceased had died in Ramsey county, a resident thereof, but it did not present its claim on said notes to the Probate Court nor commence any action or proceeding in any court to establish its claim until in January, 1897, more than eight months after final settlement of the estate. It then commenced an action in the United States Circuit Court in Minnesota against this petitioner as administrator to recover on the notes, claiming in his complaint that the estate had not been finally settled, but was then in process of probate. This petitioner answered setting up that the estate had been fully administered, its final account as administrator settled and allowed and decree of distribution duly entered on April 27, 1896; that he was no longer administrator, there was no longer any estate of the deceased, and that the claim was barred by virtue of the statutory provisions above mentioned. The facts were stipulated, and the action tried on an agreed statement of facts, from which it appeared that the estate had been administered strictly in accordance with the

requirements of the statutes of Minnesota and that everything required by the statutes of Minnesota had been done as early as April 27, 1896. The Circuit Court refused to recognize the statutes of the state of Minnesota above mentioned and the said action and decree of said Probate Court as binding on citizens of other states than Minnesota, and gave judgment on April 17, 1899, for the bank for $6,782.89 and ordered it to be certified to said Probate Court as a claim duly established and allowed against the estate of said deceased. The judgment of the Circuit Court was taken to the Circuit Court of Appeals, Eighth Circuit on writ of error. It was admitted by defendant in error, on the argument in said Circuit Court of Appeals, that it had no cause of action which it could enforce in any court of the state of Minnesota, if it had chosen to resort to the state courts, but it was claimed that neither the statutes of the state of Minnesota nor the action or decree of said Probate Court was binding on it because it was a citizen of the state of New York. The said Circuit Court of Appeals so held, and refused to recognize the said statutes of the state of Minnesota and the said action and decree of said Probate Court as binding upon non-citizens of the state of Minnesota, and by its judgment of October 17, 1900, affirmed the decision of the said Circuit Court.

Your petitioner further shows that said judgment and the opinion of said court of appeals is contrary to the settled law of the state of Minnesota, as established, declared and interpreted by

the state Supreme Court, and if it be upheld deprives the state of the right to give any effective administration to estates of its own citizens, and necessarily throws the administration of such estates, so far as non-resident creditors are concerned, into the federal courts—for state courts cannot be expected to hold one law to govern citizens of the state and another to apply in case of non-residents, nor can they be expected to repeal the state statutes and overrule their recognized decisions out of deference to any federal court of less dignity or authority than the Supreme Court of the United States. Not only is this decision of great moment to the state of Minnesota, but systems of probate adopted by many states are so similar to the system in Minnesota, that the decision rendered in this action, if it stands, will create widespread confusion outside the state of Minnesota, as well as in Minnesota.

The question is one of such importance, that the Circuit Court of Appeals, upon application entered the following order:

"For good cause shown, and on application of counsel for plaintiff in error,

It is now here ordered that the mandate in this cause be, and the same is hereby stayed for a period of thirty days from this date pending an application to the Supreme Court of the United states by counsel for plaintiff in error for a writ of certiorari in the above entitled cause.

December 21, 1900."

(See record, pp. 44, 45).

The issues in this action were the same as in the case of Security Trust Co. v. Dent, receiver,

The two actions were tried at the same time in the Circuit Court, and were argued together in the Court of Appeals. The Court of Appeals disposed of this case on the opinion in the case of Security Trust Co. v. Dent. The decision of the Court of Appeals in the case of Security Trust Co. v. Dent is not final, and plaintiff in error is entitled in that case, as of right, to remove the judgment to this Supreme Court of the United States on writ of error. It has taken the necessary steps to have such writ of error issued, and that judgment will have been removed to the Supreme Court by the time this petition shall be presented. If that judgment be reversed by the Supreme Court the judgment in this action must, nevertheless, stand, unless it be ordered that the record in this case be certified to this court by said Court of Appeals. Manifestly, even though the importance of the questions involved would not require the court to make such an order, justice would require, the case having been disposed of on the opinion in the Dent case and the amount of the judgment being over six thousand dollars, that this case should accompany the Dent case into the Supreme Court of the United States.

Wherefore your petitioner, the plaintiff in error in the said Circuit Court of Appeals, prays that a writ of certiorari may issue out of this, the Supreme Court of the United States, to said Circuit Court of Appeals for the Eighth Circuit, for the removal of the judgment and record in the said cause, now remaining in said Court of Appeals, in-

to the Supreme Court of the United States, in order that said judgment and proceedings may be reviewed and the errors therein corrected.

Dated January 8, 1901.

EDMUND S. DURMENT,
ALBERT R. MOORE,
Attorneys for Petitioner.

Gentlemen:

Please take notice that the foregoing petition for writ of certiorari to issue to the Circuit Court of Appeals, Eighth Circuit, will be presented to the Supreme Court of the United States, at Washington, D. C., on Saturday, the 19th day of February, A. D. 1901, at ten o'clock in the forenoon, or at such later hour on said day as the said court will hear said petition; and in case the said court will not receive said petition on that day, the same will be presented to said Supreme Court of the United States on the opening of said court on Monday, 21st day of January, A. D. 1901, or as soon thereafter as the court will receive and hear the same.

Respectfully,

EDMUND S. DURMENT,
ALBERT R. MOORE,
Attorneys for Plaintiff in Error.

To Edward C. Stringer, McNeil V. Seymour, Attorneys for Defendant in Error.

N. Black 283.
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Office Supreme Court
FILED
JAN 17 1901
JAMES H. McKENNEY,
Clerk

Brf. of Durment for Petitioner.

Supreme Court of the United States.

Filed Jan. 17, 1901.

SECURITY TRUST CO., As Administrator, Etc.,
Plaintiff in Error and Petitioner,

vs.

BLACK RIVER NATIONAL BANK OF LOWVILLE,

Defendant in Error.

BRIEF ON PETITION FOR WRIT OF CERTIORARI.

EDMUND S. DURMENT,
ALBERT R. MOORE,
Attorneys for Petitioner.

United States Circuit Court Of Appeals.

Eighth Circuit.

SECURITY TRUST CO., As Administrator, Etc.,
Plaintiff in Error,

vs.

BLACK RIVER NATIONAL BANK OF LOWVILLE,
Defendant in Error.

BRIEF ON PETITION FOR WRIT OF CERTIORARI.

The statutes of Minnesota, mentioned in the petition for certiorari are the following, to be found in "General Statutes 1894":

Constitution Art. VI, Sec. 7. "There shall be established in each organized county in the state a probate court, which shall be a court of record, and be held at such times and places as may be proscribed by law. * * * A probate court shall have jurisdiction over the estates of deceased

persons, and persons under guardianship, but no other jurisdiction, except as prescribed by this constitution."

General Statutes 1894:

Section 4523. "The probate court at the time of granting letters testamentary or of administration, shall make an order allowing to the executor or administrator a reasonable time, not exceeding one year and six months, for the settlement of the estate."

Section 4524. "The probate court may, upon good cause shown by the executor or administrator, extend the time for the settlement of the estate not exceeding one year at a time, unless in the judgment of the court a longer time be necessary."

Sec. 4527. "When there is not sufficient personal estate in the hands of the executor or administrator to pay all the debts and legacies and the allowance to the widow and minor children, the probate court, may on petition of the executor or administrator order the sale of the real estate or so much thereof as may be necessary to pay the same."

Sec. 4471, provides that real estate shall descend subject to the debts of the intestate.

Section 4638. "Every executor or administrator shall render his account of administration within the time allowed him for the settlement of the estate and at such other time as he is required by the court, until the estate is wholly settled."

Section 4639: "When the estate is fully administered, the executor or administrator shall petition the probate court for an order fixing a time and place in which it will examine, settle and allow the final account of the executor or administrator, and for the assignment of the residue of the estate to the persons entitled thereto by law. The final account shall be filed in the probate court at the time of filing said petition."

Section 4640. "Upon the filing of said petition

the court shall make an order fixing a time and place for hearing the same. Said order shall be published according to law."

Section 4641. "On hearing such petition, the probate court shall examine every executor and administrator upon oath as to the truth and correctness of his account before the same is allowed; but such examination may be omitted when no objection is made to the allowance of the account, and there is no reason to doubt the justness and correctness thereof; and the heirs, legatees and devisees may be examined on oath upon any matter relating to the account of any executor or administrator, whenever the correctness thereof is called in question. If from such examination the account is found just and correct the probate court shall allow and settle the same, and upon satisfactory evidence shall determine the rights of the persons to the residue of said estate and unless partition is asked for and directed as hereinafter provided, make a decree accordingly, and assigning said residue to the persons thereto entitled by law."

Section 4642. "In such decree the court shall name the persons and the proportion or parts to which each is entitled, and if real estate, give a description as near as may be of the land to which each is entitled; and such persons may demand and recover their respective shares from the executor or administrator, or any other persons having the same; and a certified copy of any decree of distribution of real estate may be recorded in the office of the register of deeds in every county in this state in which are situated any of the lands described in such decree; and such register of deeds shall enter in his reception book the name of the deceased as grantor, and the names of the heirs, legatees or devisees, as grantees, and shall make in such reception book so many separate grantor and grantee entries for such decree as there are persons taking real estate in such county under said decree."

Section 4509. "At the time of granting letters testamentary or of administration, the court shall

make an order limiting the time in which creditors may present claims against the deceased for examination and allowance, which shall not be less than six months nor more than one year from the date of such order; said order shall fix the time or times and place in which the court will examine and adjust claims and demands of all persons, against deceased. No claim or demand shall be received after the expiration of the time so limited, unless for good cause shown the court may in its discretion, receive, hear and allow such claim upon notice to the executor or administrator, but no claim shall be received or allowed unless presented within one year and six months from the time when notice of the order is given, as provided in the next section, and before final settlement, and the allowance or disallowance of any claim shall have the same force and effect as a judgment for or against the estate."

Section 4510. "The order prescribed in section one hundred and two shall be published according to law, and shall be notice to all creditors and persons interested."

Section 4511: "All claims arising upon contracts, whether the same be due, not due, or contingent, must be presented to the probate court within the time limited in said order, and any claim not so presented is barred forever; such claim or demand may be pleaded as an offset or counterclaim to an action brought by the executor or administrator. All claims shall be itemized, and verified by the claimant, his agent or attorney, stating the amount due, that the same is just and true, that no payments have been made thereon which are not credited, and that there are no offsets to the same to the knowledge of affiant. If the claim be not due, or be contingent, when presented, the particulars of such claim must be stated. The probate court may require satisfactory vouchers or proofs to be produced in support of any claim."

Section 4514. "No action at law for the recov-

ery of money only shall be brought in any of the courts of this state against any executor, administrator or guardian upon any claim or demand which may be presented to the probate court except as provided in this code. No claim against a decedent shall be a charge against or lien upon his estate unless presented to the probate court as herein provided within five years after the death of such decedent: Provided that this provision shall not be construed as affecting any lien existing at the date of such death. Provided further, that said provision shall not be construed as affecting the right of a creditor to recover from the next of kin, legatee or devisee to the extent of assets received. This provision shall be applicable to the estate of persons who died prior as well as to those who may die after adoption of this code."

Section 4517. "Upon the allowance or disallowance of any claim the court shall make its order allowing or disallowing the same. The order shall contain the date of allowance and the amount disallowed, and be attached to the claim with the offsets if any."

Section 4522. "In case of appeal from the allowance or disallowance of any claim in whole or in part, the district court shall certify to the probate court the decision or judgment rendered therein."

That the statute requiring claims to be presented to the probate court within the time limited, is a statute of limitation, and a failure to present the claim within the time limited an absolute bar, is established by the following decisions:

39 Minn. 212, Fern v. Leuthold. The court says (pages 216, 217):

"We think, however, they must be reversed on the ground that the respondents had no standing in court as creditors; having neither presented their claims for allowance to the probate court within

the time limited for that purpose, nor having any suit pending on them against Fern at the time of his death. Not having been presented to the probate court for allowance, the claims were certainly barred under the provisions of Gen. Stat. c. 53, Sec. 14, unless saved by section 16 of the same chapter, by reason of the pendency of an action on them at the time of Fern's death. But we take it that, to bring the case within this section, the specific claim or cause of action must be in litigation at the time of the debtor's decease. Only the claim thus in litigation can be paid without being proved in the probate court."

47 Minn. 382, *Hill v. Nichols* (page 384):

"In view of the effect given by the decision in *Bryant v. Livermore*, *supra*, to similar provisions in the statutes in force prior to the adoption of the new Code (see Gen. St. 1878, Ch. 53, Sec. 14), there can be no doubt that, by force of this section 104 (Sec. 4511), the failure to present a claim to the probate court would not only bar the assertion of the claim against the estate, but preclude a recovery against the heir."

61 Minn. 361, *Hantzch v. Massolt*, was an action to recover from the heirs to the extent of assets received. The court says (page 366):

"If the plaintiff could have presented his claim to the probate court and thereby secured its payment from the estate of the sureties in the ordinary course of administration, this action is barred; otherwise not."

Again, in construing Section 4511, above cited, as to what contingent claims therein mentioned are barred by failure to present to the probate court, it is said (page 368):

"This section means that all contingent claims which become absolute and capable of liquidation, whether due or not, before the expiration of the

time limited for proving claims, must be so presented, or they are barred."

61 Minn. 520, *Oswald v. Pillsbury*, recognizes this as the rule.

66 Minn. 246, *State v. Probate Court of Rock County*, recognizes this rule. The court says (pages 249, 250):

"If then, the indebtedness depended upon no contingency, and the right to recover by suit was unqualified up to the time of Thompson's decease, the claim was one to be presented to the probate court for allowance and payment in the course of administration proceedings. It was a claim arising on contract. It was certain in amount. It was due absolutely and clearly within the provisions of G. S. 1894, Section 4511, which requires that such claims must be presented to the probate court within the time limited by an order of the court theretofore made (which time had expired in this case), and, if not so presented, to be forever barred."

75 Minn. 481, *Fitzhugh v. Harrison*. The court says (page 489):

"A contingent claim, if it becomes absolute, and capable of liquidation, before the expiration of the time limited for the presentation of claims to the probate court for allowance, must be presented, or it will be barred. Gen. St. 1894, Sec. 4511; Hantzch v. Massolt, 61 Minn. 361."

In the case in which certiorari is now asked for, every requirement of the statutes of the state was complied with and every act authorized by statute to be performed in the course of administration was performed, which would seem to render it unnecessary to cite decisions to show that the admin-

istration was closed, the administrator gone out of office and the jurisdiction of the probate court at an end. But that such was the effect of what was done is well established by the following decisions:

33 Minn. 94, *State v. Probate Court of Sibley County.* On page 96 the court says:

"The want of jurisdiction in this case is still further emphasized by the fact that the administration has been closed by the allowance of the administrator's accounts and his discharge and there is no attempt to re-open it. So long as it remains closed the probate court has no more jurisdiction over the estate, or the property belonging to it, or which once belonged to it, than if there had never been any administration and there was no attempt to institute one. The jurisdiction of the court has been fully exhausted, and it can do nothing further unless it is restored in the manner pointed out in the statute."

37 Minn. 160, *Hurley v. Hamilton.* On page 161 the court says:

"The statute never contemplated a proceeding in probate court for the purposes of partition after the administration is closed and the lands assigned or turned over to the heirs or devisees. When that is done, the property has passed out of court, and the probate court has no longer any jurisdiction over it. Any proceeding thereafter for partition would not be a step in the administration of the estate of a deceased person, and hence would not be within the jurisdiction of the probate court."

40 Minn. 296, *State v. Probate Court of Ramsey County.* The court says (page 299):

"The object of the application on the part of the acting administrator was to submit his final account and close the administration. The order

made was evidently so intended, and must be construed as a final order discharging the administration of the estate. The parties had their remedy by appeal, but the order could not be attacked collaterally or treated as void, so as to warrant subsequent proceedings to reach the real estate as if the administration was still in progress and the estate still unsettled.

"The omission of the land from the inventory, and the subsequent discovery of the real estate of the deceased which was not reduced to assets by the administrator or distributed to the heirs do not operate to revive the administration and open the judgment, or warrant further proceedings. The land descended to the heirs, subject to the claims of administration upon it. The effect of a decree assigning the real estate to the heirs is simply to discharge it from the administration, and, of course, the final discharge of the administration must discharge the lien of the creditors."

47 Minn. 22, *Stackhouse v. Berryhill.* After an estate had been administered as intestate, a proceeding to probate a will of the deceased was instituted. The court says (page 22):

"Here the proceedings had terminated, and a final decree had been entered, when the will was presented to the probate court. The letters of administration were beyond recall, for their mission had ended. The order of the court whereby this will may be allowed in this state cannot of itself reverse the first administration, nor will it have the effect to vacate and set aside the final decree therein."

In the estate involved in the case last cited, the will was subsequently admitted to probate (in a separate proceeding from the administration of the estate as intestate) and an application made for sale of the real property to pay expenses of admin-

istration. The proceeding was under review by the Supreme Court in 57 Minn. 109, *In re Thompson's Estate*. The court says (page 113):

"If it be conceded that real estate may be sold to pay charges of administration, and that, with a view to payment of such charges and debts and legacies, he may take possession of real estate, still in this case there could be no legitimate charges of administration, and there were no debts or legacies. There could be no legitimate charges of administration, for there was nothing to administer. There had already been full administration."

58 Minn. 29. *In Re Charles Scheffer's estate*. (Pages 34, 35):

"In the exercise of their functions by probate courts, things that are mere formalities are not required. On the matters of closing administration, of discharging the executor, or relieving him of further responsibility, an accurately drawn and formal order or decree may not be necessary. But there must be some order or decree which contains the substance of the matter, which shows that the attention of the court was directed to it, and that it intended the result claimed. That must appear with certainty, beyond mere conjecture."

In the case cited no decree of distribution had been made, and this fact was relied on by counsel to show that the probate court retained jurisdiction.

61 Minn. 91, *Schmidt v. Stark*. (Pages 92, 93):

"The probate code neither authorizes nor provides for an assignment of any part of the estate of a deceased person until after the estate is fully administered. It contemplates but one decree of distribution, by which the entire residue of the estate shall be assigned to those entitled to it, specifying the proportion or part to which each is entitled.

G. S. 1894 Secs. 4639-4642. Read in the light of the statute and of the admissions of the answer, we think the complaint would fairly admit of being construed as alleging that all this had been duly done, and that the proportion of the estate assigned to plaintiff was an undivided fifth. If this was the state of facts, the jurisdiction of the probate court over the property had ended. The effect of a decree of distribution is to transfer the title to the personalty and the right of possession of the realty from the personal representative to the distributees, devisees or heirs. The property then ceases to be the estate of the deceased person, and becomes the individual property of the distributees, with the full right of control and possession, and with the right of action for it against the personal representative if he does not deliver it to them. If such an action is necessary, resort must be had to some other forum, for the probate court has no further jurisdiction. Hurley v. Hamilton, 37 Minn. 160."

This case in which certiorari is now asked, was disposed of by the Court of Appeals on the opinion in the case of Security Trust Co. v. Dent (104 Fed. Rep. 380). That court assumes that the probate court was of opinion that it retained jurisdiction to enforce its decree, and holds that it did so retain jurisdiction, because, it says, to hold otherwise would be to "deny to the probate courts of the state the right to enforce such orders relative to the distribution of estates as they may see fit to make, leaving the administrators,when final settlements are approved, in full possession of all the property in their hands, and at liberty to deal with it as they please until they are called to account by some other tribunal than that from which they originally devised their au-

thority." But the Supreme Court of the state has decided that under the constitution and laws of Minnesota that is just the situation, and that in such case the probate court has no jurisdiction to enforce its order, but resort must be had to another court. In *Schmidt v. Stack*, cited above, the Supreme Court of Minnesota, says:

"The effect of a decree of distribution is to transfer the title to the personalty and the right of possession of the realty from the *personal representative*" (meaning of course administrator or executor) "to the distributees, devisees or heirs. The property then ceases to be the estate of the deceased, and becomes the individual property of the distributees, with the full right of control and possession, and with the right of action for it against the *personal representative* if he does not deliver it to them. *If such an action is necessary, resort must be had to some other forum, for the probate court has no further jurisdiction.* Hurley v. Hamilton, 37 Minn. 160."

This is necessarily true, for the final decree of the probate court only adjudges the right to the succession and that the administrator as such no longer has the right to possession—34 Minn. p. 336, *Farnham v. Thompson.*—The administrator, or a third party, may have acquired the title from the heirs and next of kin, or the administrator may hold possession under a valid pledge created before the death of the intestate. The probate court has no jurisdiction to try any of these claims to the right of possession. Because the succession, by reason of the death, devolved upon certain persons ascertained by the final decree, it does not follow that the right of pos-

session is in fact in those persons at the date of entry of the final decree. The opinion of the Court of Appeals, is squarely in conflict with the decisions of the Supreme Court of the state on this proposition.

The assumption by the Court of Appeals that the probate court was of opinion that its jurisdiction continued, is unfounded in fact, for, (though it does not appear in the record it is true) in this Black River National Bank case, an application had been made to the probate court for leave to present this claim just before commencing suit in the Circuit Court, and the probate court denied the application on the ground that it no longer had jurisdiction, the estate having been finally settled. Nor did the record before the Court of Appeals, in our opinion, justify the assumption that the probate court was of opinion that it retained jurisdiction after the entry of the final decree. The assumption of the Court of Appeals was based on the fact that the probate court subsequently, on petition, corrected its final decree, by correcting the description of certain property mentioned in it, and by adding certain property which was not described in it. An examination of the petition shows that it was not presented by "the administrator" as such. It recites that the administrator had theretofore been discharged, and the petition is made by the Trust Company in its individual capacity and not as administrator. (For this petition see record, pages 18, 19). The order of correction itself does not proceed upon the

theory of an existing office of administrator. It says petitioner "was administrator," i. e., had been such, and assumes to correct certain "*clerical errors.*" Moreover the correction of the decree was not an act in the administration of the estate. It added nothing to the decree and took nothing from it, for the decree distributed not only the property particularly described in it, but in terms "all other property of the deceased in the state of Minnesota." The property added by particular description by the amendment only served to particularize the property covered by the general description "all other property," and was fully disposed of by the decree without the amendment. Being a court of record it had the right to correct its record at any time, and it was expressly authorized to do so by statute, Sec. 4730, which is as follows:

"The probate court, may, at any time, correct, modify or amend its records to conform with the facts in the same manner as a district court."

It would have the right to make the amendment after the lapse of ten years.

But, even if the probate court had supposed it retained jurisdiction, it was immaterial. The decisions above cited establish that it did not retain jurisdiction. Its jurisdiction being at an end, it could not revive it by any such supposition.

The Court of Appeals seems to think jurisdiction was retained until a formal order of discharge should be made. But our statutes do not provide for nor authorize any such order. The statute

provides only for a "*settlement and allowance*" of a final account, and the entry of a decree of distribution "after the estate has been fully administered." (All of which was done in this case). That marks the end of administration. The Supreme Court in the case cited hereinbefore has said that no formal order of discharge is necessary.

The Circuit Court of Appeals is of opinion that the right of the non-resident creditor cannot be made to depend on the length of time a probate court happens to allow for making a final settlement. It cites no authorities in support of its opinion, and, as we think gives no reason for it. There are two reasons why its opinion, as applied to this case, is not well founded. First, the statute of this state is a statute of limitation. Second, the probate court had the estate in its possession, and jurisdiction to dispose of it. When once it had lawfully adjudged the estate free from the claims of administration, and distributed the property, the estate was disposed of and there was nothing against which a claim could be established.

This is a statute of limitation, for it bars the claim after a certain time. Every creditor has at least six months in which to present his claim. Under certain circumstances he may have more. That the court in its discretion for cause shown may give time additional to the six months does not change the nature of the statute. It is in accordance with a sound public policy that estates be speedily settled. It is entirely proper that estates should not remain long tied up in adminis-

tration proceedings to await the action of dilatory creditors; as it is also proper that a creditor may be let in after the time fixed, if it will not unduly delay the closing of administration. All statutes of limitation are more or less flexible. In case of statutes limiting the time to commence actions for fraud, usually it is held that the action must be commenced with reasonable diligence, and that may require the action to be commenced long before the time fixed by the statute has run. Likewise, infancy, insanity, absence from the state, extend the general statute of limitations. No question is made, and none can be, that six months is not a reasonable time to allow in which to present the claim. See 45 Minn., pp. 168, 168, Hill v. Townley; 168 U. S. 88-91, Turner v. People of N. Y.

While, perhaps, no statute in terms exactly like this has come before the federal courts, statutes of much the same nature, and having the same object have frequently been sustained by the federal courts.

51 Fed. Rep. 405, *Priest v. Glenn*, is a decision by C. C. A. Eighth Circuit, which assumes that a statute, in substance the same as the Minnesota statute, is a statute of limitations and binding on the Federal courts. The court says (page 408):

"The second point made on the argument of counsel for plaintiff in error is that the statute of Missouri requiring the presentation of claims against estates of deceased persons within two years of the publication of the notice of the appointment of the executor or administrator bars recovery on their cause.

"This action was brought within two years after the cause of action was created by the assessment made in March, 1886, and, according to the construction placed upon the statute by the supreme court of Missouri, the two-year period does not begin to run until the right of action has accrued. (Citations). The bar of the statute had not, therefore, become complete when the action was commenced."

18 Fed. Rep. 199, *Miner v. Aylesworth*, holds that a statute limiting the commencement of actions against administrators to three years from the publication of notice of his appointment is binding on the federal courts.

113 U. S. 449, *Morgan v. Hamlet*, held a statute, substantially like the Minnesota statute, to be binding on the federal court. It was an action in equity. The court said (page 451):

"In Arkansas it appears that there is a special statute of limitations governing claims against estates of deceased persons, commonly called the statute of non-claim. It is as follows:

"All claims not exhibited to the executor or administrator, as required by this act, before the end of two years from the granting of letters, shall be forever barred."

Again (page 452):

"Whatever its description, it was a claim against the estate of John G. Morgan, and for which his personal representative was in the first instance liable; and the statute is a bar to every such claim, unless presented within the time prescribed."

27 Fed. Rep. 405, *Dodd v. Ghiselin*, holds that the laws of the state for settlement of estates of deceased persons are binding on the federal courts.

10 Fed. Rep. 53, *Pulliam v. Pulliam.* In this case, reconsidering a former decision by him in the same action, Judge Hammond, on pages 73 to 79, examines and discusses the grounds upon which such statutes stand, more fully than any other opinion we have seen, except, perhaps, the opinion in Jones v. Drewry, next herein cited. He concludes that they are not only statutes of limitations, but also rules of property and binding on the federal courts, and that the contrary contention finds no support in Union Bank v. Jolly, Payne v. Hook and other cases cited.

72 Ala. 314, *Jones v. Drewry.* In this case the point was squarely raised, fully discussed and decided. The question was examined and the decision was in favor of our contention. Although it is a decision of a state court we cite it, because it was in Alabama that the case of Suydam v. Broadnax arose, and became the decision in that case was urged on the Alabama court as settling the question against our contention.

19 Fed. Cases (Case No. 11376), page 1260, *Pratt v. Northam*, opinion by Justice Story, holds a like statute to bind the federal courts, even in equity. He says (page 1261):

"This statute of limitations as to executors and administrators, is not created for their own security or benefit; but for the security and benefit of the estates, which they represent. It is a wholesome provision, designed to produce a speedy settlement of estates, and the repose of titles derived under persons who are dead."

10 Fed. Cases (No. 5630), page 832, *Goshorn v. Goshorn*, held a statute, requiring an action to charge the widow and heirs for the debt of the ancestor to be commenced within one year, binding on the federal court in an action in equity. The statute also, in terms, required the action, if more than one person were liable (which was the case in the action then before the federal court) to be filed on the chancery side of the "Court of Common Pleas," a state court.

88 U. S. (21 Wall) 503, *Kirby v. McGlynn*, (Broderick's will). In this case, "An act to regulate the Settlement of Estates of Deceased Persons," and providing for such proceeding to be had in the Probate Court, contained a provision that any person wishing to contest the validity of a will admitted to probate, might do so within a year after the probate of the will, by filing in the probate court a petition to revoke the will, was recognized as binding upon the federal court, even in an action in equity.

147 U. S. 647, *Bauserman v. Blunt*. We are unable to see how on principle it can be held that the Minnesota statute as to claims against the estates of deceased persons are any less binding than the Kansas statutes considered in the case of Bauserman v. Blunt.

The proceeding of the probate court was *in rem*. The entire estate was in its possession, (149 U. S.

608, 615, *Byer v. McAuley*,) and the final decree was binding on all the world.

61 Minn. 343, M'Namara v. Casserly.

62 Minn. 35, 36, Ladd v. Weiskopf.

116 California, 359, The William Hill Co. v. Lawler.

The court had the property in its possession, with jurisdiction and for the purpose of establishing claims against it, and, so far as necessary, to use it to pay those claims, and to adjudge it free from claims at the proper time. The creditor of the deceased had no lien on the property. It had simply the right to establish a claim against that property before the court should finally dispose of it. If it neglected to establish its claim against the fund before the court had adjudged it free from the claims of creditors and distributed it, it lost its right.

The fact that the statute requires the claim to be presented to the probate court for allowance does not invalidate it as against non-resident creditors. Such provision is necessary to any orderly or effective administration of the estate. The federal courts have always recognized this to be true. The judgment of the court now complained of, orders that it be presented to the probate court.

132 U. S. 484, *Rio Grande R. Co. v. Gomila*:

"We do not question the general doctrine laid down in Yonley v. Lavender, 88 U. S. 276, 279, 280, to the effect that the administration laws of a state are not merely rules of practice for the courts, but laws limiting the rights of the parties, and

will be observed by the federal courts in the enforcement of individual rights, and that those laws upon the death of a party withdraw the estate of the deceased from the operation of the execution laws of the state, and place them in the hands of his executor or administrator for the benefit of his creditors and distributees. * * * We do not recall any case now where the federal courts have not paid respect to the principle that all debts to be paid out of the decedent's estate are to be established in the court to which the law of his domicil has confided the general administration of estates, etc."

The following, also is pertinent at this point:

172 U. S. 358, *M. K. & T. Trust Co. v. Krumseig*:

"We think it a satisfactory reply to such a proposition that the complainants in the present case were not seeking equity, but to avail themselves of a substantive right under the statutory law of the state. It seems to be conceded, or, if not conceded, it is plainly evident, that if the cause had remained in the state court where it was originally brought, the complainant would have been entitled, under the public policy of the state of Minnesota, manifested by its statutes as construed by its courts, to have this usurious contract canceled and surrendered without tendering payment of the whole or any part of the original indebtedness. The defendant company could not, by removing the case to the federal court, on the ground that it was a citizen of another state, deprive the complainants of such a substantive right. With the policy of the state legislation the federal courts have nothing to do. If the states, whether New York, Arkansas, Minnesota, or others, think that the evils of usury are best prevented by making usurious contracts void, and by giving a right to the borrowers to have such contracts unconditionally nullified and canceled by the courts, such a view of public policy, in respect to contracts made within the state and sought to be enforced therein, is obligatory on the federal courts, whether acting in equity

or at law. The local law, consisting of the applicable statutes as construed by the supreme court of the state, furnishes the rule of decision."

Admitting that the non-resident creditor cannot be deprived of the right to try a disputed claim in the federal court, it does not militate against the contention of plaintiff in error. The statute does not, in terms, nor by any fair intendment, prohibit suit in a federal court to try a disputed claim. No provision is made for a trial in the ordinary sense, in the probate court, of any disputed claim. It is true that the court may require satisfactory vouchers or proofs to be furnished—but a judgment of the federal court would be such voucher or proof. The claim is to be filed, i. e., presented at any time the creditor wishes. The proofs or vouchers are to be submitted at a later date fixed by the order of the court. The claim can be presented and suit to establish it commenced in the federal court. The statute does not require the claim to be established within the six months, but only to be presented within that time. The probate court in making its order allowing or disallowing, makes but a preliminary or prima facie findings. If the claim is disputed, the trial, as is ordinarily understood by the term, is to be had on an appeal to a court of common law powers and jurisdiction. The presenting of the claim to the probate court is not in any sense the commencement of an action. It is no more than a demand for payment. If it be objected to, that is a refusal.

Upon such objection being made, the claimant may submit the matter for decision to the probate court in the informal manner provided for in that court, or claim his right to a trial in the federal court, and commence his action in that court—or possibly after the order of the probate court allowing or disallowing the claim, may resort to the federal court instead of appealing to the state District Court. The state law, it is true, has not undertaken to specify in what way or at what time the creditor may resort to the federal court, for it has no authority to do so. The laws of the United States give that right, and the statutes of the state presupp se the right. Neither does the statute attempt to take away or abridge the right to resort to the federal court. There is no attempt on the part of the state to discrimina'e against non-residents, nor can there be any warrant for the federal courts to discriminate against citizens of the state, as is done in this case.

It can not be claimed that presenting the claim to the probate court would deprive the claimant of the right to resort to the federal court. He must present his claim to the probate court before it can share in the estate, and the federal court will require time to do so after judgment obtained if he does not do so before. The state has a right to require him to do so within six months, though it will be required to keep the administration pending until his right to payment shall be determined in the federal court, if he present the claim within the six months.

But, if it be considered that presenting the claim is the commencement of the suit, yet the statute is binding on the non resident creditor. When the jurisdiction of the federal court depends upon citizenship, as it does in this case, the substantive right is under the law of the state. The non-resident in such case has a choice of forums, but not of rights of action. The federal court, if he resort to it, is as to his claim, the probate court for the purpose of the establishment of his claim. While the method of procedure for establishing it differs in the federal court from the method in the probate court, the measure of his right is the same in each court. If he have no right which could be enforced in the probate court if he should choose that forum, he has none in the federal court. If the lapse of time has barred his right, it is barred in whatever court he chooses to enter. If he choose the federal court he must present his claim there within the six months or before the estate is settled, for after that time his cause of action ceases to exist.

On the other hand, if it be taken that the administration of the estate, including the making and publishing of the order fixing time to file claims is the commencement of the proceeding, and the presenting the claim an appearance by the claimant, the right of removal given by the federal statute prescribes the method of getting into the federal court. Of course the removal would have to be made before the proceeding had run its full course.

The statutes of Minnesota, here in question, are

substantially of the same sort as those cnosidered in 133 U. S. 473, *Delaware Co. v. Diebold Safe and Lock Co.* This case probably prescribes the method in which the claimant in this case properly could have gone into the federal court. Gen. Statutes 1894, Secs. 4665, 4673, regulating appeals from the probate court in Minnesota, taken in connection with the statutory provisions hereinbefore set out, will show the application of the decision in *Delaware Co. v. Diebold Safe and Lock Co.*—to this case.

It seems to us that the questions involved in this case are of such importance, that, if the law is as declared by the Circuit Court of Appeals, the courts of the state of Minnesota, and of the many other states having similar probate systems are entitled to have it so declared to be by the court of supreme authority, and, if the law is otherwise they are entitled to have the doubt and uncertainty raised by that decision removed. We submit that the order made by the Circuit Court of Appeals staying its mandate to give an opportunity to apply for the writ of certiorari is potent evidence that it considers this a case to justify this court in issuing the writ.

Furthermore, the case of Security Trust Co. v. Dent was heard both in the Circuit Court and the Court of Appeals with this case, and this case was disposed of by the Circuit Court of Appeals on the opinion in that case. Writ of error lies in that case, but not in this. We have taken steps to remove that case to the Supreme Court on writ of

error, and such writ has already been issued. Simple justice would seem to require that this case accompany it to the Supreme Court, even though the questions involved were not sufficient in themselves to require this case to be certified.

We respectfully submit that a writ of certiorari should be granted as prayed in the petition.

EDMUND S. DURMENT,
ALBERT R. MOORE,
Attorneys for the Petitioner.

No. 232. 39

FEB 3 1902

JAMES H. McKENNEY, Clerk

Brf. of Durment for P. in E.

Supreme Court of the United States.

OCTOBER TERM, 1901.

Filed Feb. 3, 1902. No. 232.

SECURITY TRUST COMPANY, as Administrator of the Estate of Sumner W. Matteson, Deceased,
Plaintiff in Error,

vs.

BLACK RIVER NATIONAL BANK OF LOWVILLE,
Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.

EDMUND S. DURMENT,
ALBERT R. MOORE,
For Plaintiff in Error.

Supreme Court of the United States.

SECURITY TRUST COMPANY, as Administrator of the Estate of Sumner W. Matteson, Deceased,

Plaintiff in Error,

vs.

BLACK RIVER NATIONAL BANK OF LOWVILLE,

Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

The plaintiff (defendant in error), commenced an action at law against defendant (plaintiff in error), alleged to be administrator of the estate of Sumner W. Matteson, deceased, to recover on certain promissory notes executed by Sumner W. Matteson in his life time, alleging that the estate was yet in process of settlement in the probate court for Ramsey County, Minnesota (Record, pages 1 to 4). The defendant answered alleging that the estate had been fully administered and distributed in said probate court, and it was no longer administrator; that an admin-

istrator having been duly appointed, notice given to creditors, the estate duly administered, finally settled and distributed, and the plaintiff having failed to present the notes, or any claim on account thereof, to the probate court, or to commence any action to recover on the same until after the expiration of the time fixed to present claims and until after final settlement of the estate, the action was barred (Record, pages 6 to 9).

The answer also set forth a further defense which was abandoned and is entirely out of the case. A reply was filed which will be found at pages 10 to 11 of the record.

The case was submitted upon an agreed statement of facts duly filed. The facts as stipulated, in brief, were: Sumner W. Matteson, from a time anterior to the execution of the notes sued on until his death, was a citizen of Minnesota, residing in St. Paul in Ramsey County, where he died, July 22, 1895, leaving real and personal estate there situate. On September 3, 1895, the probate court of that county duly appointed the defendant administrator of his estate. Notice to creditors was given and the administration duly had in accordance with the laws of Minnesota. The final account of administration was settled and allowed, and final decree of distribution was entered April 27, 1896, determining that the estate of the deceased had been fully administered and assigning to and vesting in the heirs and next of kin of the deceased certain real and personal property therein described and "*all other of the estate of the deceased in the state of Minnesota.*" The plaintiff bank knew,

as early as September 1, 1895, that said Sumner W. Matteson had died in St. Paul a resident of said city. The said bank never presented its claim to said probate court, and commenced no action thereon in any court, and no action was commenced until the plaintiff commenced this action in the federal circuit court of Minnesota on January 22, 1897. Facts were admitted showing distribution made by defendant after the final decree had been entered. There are other immaterial facts admitted. (For stipulation of facts see record, pages 12 to 22.

No claim was made at the trial nor in the circuit Court of Appeals, that any of the proceedings in the probate court were irregular or insufficient, but the sole question was as to the effect of the law of Minnesota and the probate proceedings. The reply raised the question of the regularity of the notice given of the order limiting the time to present claims, but that position was abandoned, and the facts stipulated show that notice was given as required by the statute. The plaintiff claimed that the settlement and allowance of the final account of the administrator and the decree of distribution were not effectual to close the administration and discharge the administrator; that the laws of Minnesota fixing the time within which claims shall be presented did not bind the plaintiff in the federal court; that the plaintiff is not bound by the probate proceedings. The defendant asserted to the contrary.

The trial judge was of opinion that the statute of Minnesota requiring claims to be presented to the probate court within the time limited is not binding

on the Federal Courts. Touching the claim that the estate had been fully administered and the administrator gone out of office, the trial judge was of opinion, there being no statute in express terms authorizing the discharge of an administrator, that the (alleged) common law rule prevailed and the administrator continued in office notwithstanding any attempt of the probate court to discharge. He also doubted that there was a sufficient discharge, even though the court had authority, there being no order in terms discharging the administrator. Thereupon he gave judgment for $6,782.89 to be satisfied out of the property and effects of the deceased and ordering *that it be certified to the probate court as a claim duly approved, established and allowed against the estate of the deceased.* This judgment was taken to the Circuit Court of Appeals on writ of error and affirmed by that court. The circuit court of appeals was of opinion that the administration was pending; that the administrator continued in office and subject to the jurisdiction of the probate court; and that because the statute permitted the probate court in its discretion within eighteen months and before final settlement of the estate to allow the claim of a creditor, the federal courts must be conceded the same power as to claims of non-resident creditors.

The circuit court of appeals disposed of the case on the opinion in Security Trust Co., etc. v. Wm. H. Dent,, Receiver, which case was removed to this, Supreme, Court on writ of error and is No. 240 on the calendar for this term (Record p. 32). The circuit of appeals denied a petition for re-argument

(Record pp. 33 to 36). The case was then removed to this court on writ of certiorari.

The questions in this case are identical with those involved in said case of Security Trust Co., etc. v. Wm. H. Dent, Receiver, and the two probably will be argued and submitted together. The assignment of errors and the rest of the brief is a reprint from the brief in that case.

ERRORS ASSIGNED.

1. The Court erred in granting judgment in favor of the petitioner on the pleadings and the agreed facts stipulated by the parties and spread upon the records.

2. The Court erred in not ordering judgment on the pleadings and agreed facts stipulated by the parties and spread upon the records, in favor of the defendant.

3. The judgment is not supported by the facts so stipulated and agreed upon in writing and filed and spread upon the records in said action.

4. The pleadings and the facts therein set forth and the agreed facts stipulated and filed in said action and spread upon the records (upon which said judgment is based) are not sufficient to authorize the entry of said judgment or to support the judgment so rendered and entered.

5. The agreed facts stipulated in writing and filed in said action and spread upon the records are

not sufficient to authorize the entry of said judgment or to support the said judgment so rendered and entered.

6. The said judgment contravenes Article IV, Section 1, of the Constitution of the United States in that it does not give full faith and credit to the public acts of the state of Minnesota relating to the property and estate in Minnesota of citizens of that state dying therein, and in that it denies full faith and credit to the judicial proceedings of a probate court in said state duly had in a matter of which it had, and had duly acquired jurisdiction.

7. The said judgment contravenes Article X of the Amendments to the Constitution of the United States in that it denies to the state of Minnesota, the right reserved to it in said Article X, by law to provide for, control and regulate the administration and disposition of the estate and property, within the state, of its deceased citizens who die within the state.

PRELIMINARY.

Minnesota probate courts are established in the constitution of the state, and have exclusive jurisdiction of the estates of deceased persons. Administration is not according to the common law, but entirely according to statute, the legislature in the probate code having enacted a complete system of probate law, according to which the rights and remedies of creditors against the estate are materially different than at common law. The probate of an estate is

a proceeding in rem in which the probate court, through its officer, the administrator, takes into its possession the estate of the deceased, and appropriates it to the payment of the debts of the deceased.

61 Minn. 343, *McNamara v. Casserly.*

The state constitution and statutory provisions bearing upon the question involved are the following:

Constitution Art. VI., Sec. 7. "There shall be established in each organized county in the state a probate court, which shall be a court of record, and be held at such times and places as may be prescribed by law. * * * A probate court shall have jurisdiction over the estates of deceased persons, and persons under guardianship, but no other jurisdiction, except as prescribed by this constitution."

General Statutes 1894:

Section 4523. "The probate court at the time of granting letters testamentary or of administration, shall make an order allowing to the executor or administrator a reasonable time, not exceeding one year and six months, for the settlement of the estate."

Section 4524. "The probate court may, upon good cause shown by the executor or administrator, extend the time for the settlement of the estate not exceeding one year at a time, unless in the judgment of the court a longer time be necessary."

Sec. 4527. "When there is not sufficient personal estate in the hands of the executor or administrator to pay all the debts and legacies and the allowance to the widow and minor children, the probate court may, on petition of the executor or administrator, order the sale of the real estate or so much thereof as may be necessary to pay the same."

Sec. 4471, provides that real estate shall descend subject to the debts of the intestate.

Section 4638. "Every executor or administrator shall render his account of administration within the time allowed him for the settlement of the estate and at such other times as he is required by the court, until the estate is wholly settled."

Section 4639. "When the estate is fully administered, the executor or administrator shall petition the probate court for an order fixing a time and place in which it will examine, settle and allow the final account of the executor or administrator, and for the assignment of the residue of the estate to the persons entitled thereto by law. The final account shall be filed in the probate court at the time of filing said petition."

Section 4640. "Upon the filing of said petition the court shall make an order fixing a time and place for hearing the same. Said order shall be published according to law."

Section 4641. "On hearing such petition, the probate court shall examine every executor and administrator upon oath as to the truth and correctness of his account before the same is allowed; but such examiation may be omitted when no objection is made to the allowance of the account, and there is no reason to doubt the justness and correctness thereof; and the heirs, legatees and devisees may be examined on oath upon any matter relating to the account of any executor or administrator, whenever the correctness thereof is called in question. If from such examination the account is found just and correct the probate court shall allow and settle the same, and upon satisfactory evidence shall determine the rights of the persons to the residue of said estate and unless partition is asked for and directed as hereinafter provided, make a decree accordingly, and assigning said residue to the persons thereto entitled by law."

Section 4642. "In such decree the court shall name the persons and the proportion or parts to which each is entitled, and if real estate, give a description as near as may be of the land to which each is entitled; and such persons may demand and recover their respective shares from the executor or administrator, or any other person having the same; and a certified copy of any decree of distribution of real estate may be recorded in the office of the register of deeds in every county in this state in which are situated any of the lands described in such decree; and such register of deeds shall enter in his reception book the name of the deceased as grantor, and the names of the heirs, legatees or devisees, as grantees, and shall make in such reception book so many separate grantor and grantee entries for such decree as there are persons taking real estate in such county under said decree."

Section 4509. "At the time of granting letters testamentary or of administration, the court shall make an order limiting the time in which creditors may present claims against the deceased for examination and allowance, which shall not be less than six months nor more than one year from the date of such order; said order shall fix the time or times and place in which the court will examine and adjust claims and demands of all persons against deceased. No claim or demand shall be received after the expiration of the time so limited, unless for good cause shown the court may in its discretion, receive, hear and allow such claim upon notice to the executor or administrator, but no claim shall be received or allowed unless presented within one year and six months from the time when notice of the order is given, as provided in the next section, and before final settlement, and the allowance or disallowance of any claim shall have the same force and effect as a judgment for or against the estate."

Section 4510. "The order prescribed in section one hundred and two shall be published according to law, and shall be notice to all creditors and persons interested."

Section 4511. "All claims arising upon contracts, whether the same be due, not due, or contingent, must be presented to the probate court within the time limited in said order, and any claim not so presented is barred forever; such claim or demand may be pleaded as an offset or counterclaim to an action brought by the executor or administrator. All claims shall be itemized, and verified by the claimant, his agent or attorney, stating the amount due, that the same is just and true, that no payments have been made thereon which are not credited, and that there are no offsets to the same to the knowledge of affiant. If the claim be not due, or be contingent, when presented, the particulars of such claim must be stated. The probate court may require satisfactory vouchers or proofs to be produced in support of any claim."

Section 4514. "No action at law for the recovery of money only shall be brought in any of the courts of this state against any executor, administrator or guardian upon any claim or demand which may be presented to the probate court except as provided in this code. No claim against a decedent shall be a charge against or lien upon his estate unless presented to the probate court as herein provided within five years after the death of such decedent: Provided that this provision shall not be construed as affecting any lien existing at the date of such death. Provided further, that said provision shall not be construed as affecting the right of a creditor to recover from the next of kin, legatee or devisee to the extent of assets received. This provision shall be applicable to the estate of persons who died prior as well as to those who may die after adoption of this code."

Section 4517. "Upon the allowance or disallowance of any claim the court shall make its order allowing or disallowing the same. The order shall contain the date of allowance and the amount disallowed, and be attached to the claim with the offsets, if any."

Section 4522. "In case of appeal from the allowance or disallowance of any claim in whole or in part, the district court shall certify to the probate court the decision or judgment rendered therein."

Sec. 4665 provides for an appeal to the District Court.

Sec. 4668 provides for serving notice of appeal.

Sec. 4672 provides that the District Court shall try the case as if originally commenced in that court.

Sec. 4673 provides that pleadings shall be made up as in civil actions, and the issues of fact tried as in other actions.

Sec. 4676. In case of a reversal or modification of the order appealed from the District Court makes such order as the probate court should have made, and certifies its judgment to the probate court.

Sec. 4730. "The probate court may, at any time, correct, modify or amend its records to conform with the fact sin the same manner as a district court."

ARGUMENT.

The first ground of defense is that the defendant when sued was not administrator. Both the trial court and the circuit court of appeals proceeded upon the theory that the defendant was then administrator. The judgment is against the defendant only as such administrator, and the opinion filed by the circuit court of appeals expressly holds that the administrator continued in office. That the judgment cannot be sustained, if when sued the defendant was not administrator, is clear beyond need for argument.

The first question for consideration is: Was the defendant administrator at the time the action was commenced? The answer to this question of course depends upon the law of Minnesota. The administrator was the officer of a Minnesota court, appointed by that court to administer upon property left within the state by a resident of Minnesota who had died in that state. Necessarily the length of time the administrator should continue in office, and when and how cease to be administrator, depends upon the law of Minnesota. The statutes of Minnesota do not provide for any formal order discharging an administrator. They provide that when the estate has been fully administered the court shall make an order settling and allowing the administrator's final account and make a decree distributing the estate to the persons by law entitled thereto. The legal effect of such allowance of the final account and such final decree is to end the administra-

tion and render the administrator *functus officio*. That this is so is clearly shown in 87 N. W. Rep. 783, *State ex rel Matteson v. Probate Court of Ramsey County*, which was a case involving not only this same question, but also the same administration proceeding now here under consideration. This is the latest opinion of the Supreme Court of Minnesota in which the question has been considered, and in it every phase of the question is considered and the subject discussed more at length than in any former decision by that court. That such is the law of Minnesota was not in doubt before that decision was rendered, but was clear from the Statutes of the State, as well as from the prior decisions of the Supreme Court of Minnesota.

The evident theory of the Probate Code is that the office of administrator is temporary and ceases with full administration of the estate. Sec. 4523, above set out, requires the court to limit the time within which the estate shall be settled. Secs. 4639, 4640, 4641, 4642, above set out, provide for allowing the administrator's *final* account, when the estate shall have been *fully* administered, and for a decree of distribution to be made *after* the estate shall have been *fully* administered and the administrator's *final* account allowed. There is no provision of statute requiring, and none authorizing, the probate court thereafter to exercise any jurisdiction in the matter. The probate court thereafter cannot even compel the administrator to deliver the property to the distributees, but to obtain possession they must resort to another court.

The decisions of the Supreme Court of Minnesota are all to the same effect. See the following:

33 Minn. 94, *State v. Probate Court of Sibley County.* On page 96, the court says: "The want of jurisdiction in this case is still further emphasized by the fact that the administration has been closed by the allowance of the administrator's account and his discharge and there is no attempt to re-open it. So long as it remains closed the probate court has no more jurisdiction over the estate, or the property belonging to it, than if there had never been any administration and there was no attempt to institute one. The jurisdiction of the court has been fully exhausted, and it can do nothing further unless it is restored in the manner pointed out in the statute."

40 Minn. 296, *State v. Probate Court of Ramsey County.* The court says (page 299): "The object of the application on the part of the acting administrator was to submit his final account and close the administration. The order made was evidently so intended, and must be construed as a final order discharging the administration of the estate. The parties had their remedy by appeal, but the order could not be attacked collaterally or treated as void, so as to warrant subsequent proceedings to reach the real estate as if the administration was still in progress and the estate still unsettled.

"The omission of the land from the inventory, and the subsequent discovery of the real estate of the deceased which was not reduced to assets by the administrator or distributed to the heirs do not operate to revive the administration and open the judgment, or warrant further proceedings. The land descended to the heirs, subject to the claims of administration upon it. The effect of a decree assigning the real estate to the heirs is simply to discharge it from the administration, and, of course, the final discharge of the administration must discharge the lien of the creditors."

47 Minn. 22, *Stackhouse v. Berryhill.* After an estate had been administered as intestate, a proceeding to probate a will of the deceased was instituted. The court says (page 22): "Here the proceedings had terminated, and a final decree had been entered, when the will was presented to the probate court. The letters of administration were beyond recall, for their mission had ended. The order of the court whereby this will may be allowed in this state cannot of itself reverse the first administration, nor will it have the effect to vacate and set aside the final decree therein."

61 Minn. 91, *Schmidt v. Stark*, holds that the decree of distribution cannot be entered until after the estate has been fully administered, and that the entry of the decree of distribution divests the probate court of jurisdiction and thereafter it cannot even compel the administrator to turn the property in hand over to the distributees.

86 N. W. Rep., 18, *Ganser v. Ganser*, (Minnesota Supreme Court):

"The estate was fully administered, and final account made, upon which, in the due course of law, the Probate Court duly made its final decree, distributing the residue of the estate, after allowance of the account of the administratrix, to the heirs of the deceased. The final decree was made in 1891, and, so far as appears, was acquiesced in by all interested parties, *and the administration of the estate became then finally ended and closed.*"

87 N. W. Rep. 783, *State ex rel Matteson v. Probate Court of Ramsey County*: The syllabus, prepared by the court, is, "1. The Probate Code of this state makes no provision for the formal discharge of an administrator, but the necessary legal effect of an order of the probate court allowing the final account of the administrator and its final decree of distribution, assigning the whole of the estate to the heirs and distributees, is to remove the estate of the

deceased from the jurisdiction of the court, and to render the office of administrator, which depends upon such jurisdiction, *functus officio*.

2. After the estate has been so settled and assigned, and while the final decree of distribution remains unreversed and unmodified, the probate court has no jurisdiction to entertain a petition to issue a citation to the administrator requiring him to further account for the property belonging to the estate which is in his possession, or came into his possession."

The answer made by plaintiff at the trial and in the Circuit Court of Appeals to this proposition asserted by the defendant, and to the authorities cited, was in brief as follows:

1. By the allowance of the final account and the entry of the decree of distribution the Probate Court divested itself of jurisdiction over the property (the estate of the deceased), but not of jurisdiction over the administrator.

2. The record shows that neither probate court nor administrator understood that the jurisdiction of the probate court had ceased.

3. The probate court and the administrator continued to exercise jurisdiction in the administration after the entry of the final decree, because thereafter a claim was allowed against the estate, and the probate court amended the final decree by inserting the description of certain lands not specially described in the decree as originally entered, and by correcting the description of other lands which were incorrectly described in the decree as originally entered.

4. There was nothing in the record to show that the administrator had complied with the final decree by making distribution in accordance with its provisions.

5. The administrator continued in office to administer upon any property which might be discovered thereafter.

That no point in this answer was well taken was clear from the constitutional and statutory provisions of the State and from the decisions of the Supreme Court of Minnesota even prior to the decision in 87 N. W. Rep. 783, *State ex rel Matteson v. Probate Court*. But the opinion in that case meets and refutes each of the points.

The jurisdiction of the probate court over the administrator was incidental to its jurisdiction over the property. When its jurisdiction over the property ceased, jurisdiction over the administrator necessarily was at an end.

The understanding of the probate court and of the administrator is immaterial, because that understanding could not avoid the legal effect of the final decree. But the record in fact shows that the administrator and the court understood that the administrator had been discharged and the jurisdiction of the court ended. (See record, pp. 19, 20, petition and order to correct final decree, and pp. 29, 30, the acts of the administrator after entry of final decree).

Neither the administrator nor the court took any steps in the administration of the estate after the entry of the final decree. It is true that an officer of

the Trust Company, after the entry of the final decree, made the following entry on a claim which had been filed before the entry of the decree: "We allow the within claim this 20th day of May, '96. Security Trust Company, by Chas. D. Matteson, Sec'y." But the administrator has no authority to allow a claim. That can be done only by an order of the court (Sec. 4517 cited above). No such order was made, and no change was made in the final account and the court took no action in the matter. The amendment of the final decree was not a step in the administration. Describing property not theretofore particularly described in the final decree, simply particularized what was included in the decree as originally entered under the terms "all other the estate of the deceased in the State of Minnesota." As said by the Supreme Court of Minnesota, "The decree was corrected, not in the exercise of any jurisdiction over the estate, but by virtue of the power of the court to amend its records to conform with the facts; that is, to make the records speak truly as to the past official acts of the court," and under the authority of Sec. 4730 above set out.

The stipulated facts show that the administrator had in fact made distribution in accordance with the terms of the final decree (See record, p. 29, 30). But if it were otherwise it would be immaterial, because the statute does not require, nor provide for, any report to be made to the probate court showing that distribution has been made, nor has the probate court any jurisdiction to enforce distribution in accordance with its final decree. The remedy is to

be sought in another court. The reason is this: By the constitution of Minnesota the jurisdiction of that court is confined to the "estates of deceased persons" and does not extend so far as to permit it to try questions of disputed titles or rights to possession. While the final decree determines who are the persons by law entitled to succeed to the property of the deceased and in what proportions, and that the administrator has not any longer the title or right to possession by virtue of his office, it does not determine who in fact has the title and right to possession at the time of the entry of the final decree. The person named in the final decree may have transferred his interest, or his title and right to possession may have been divested by attachment or levy and sale on execution, or by insolvency proceedings. In such case the final decree would be no protection to an administrator if he should deliver the property to the person named in the final decree. All questions of title and right to possession, after the claims of administration have been satisfied, concern the property and estate of living persons only, and of such questions the probate court has not jurisdiction.

The administrator did not continue in office to administer on after discovered property. There could be no after discovered property, because the final decree adjudged that the estate had been fully administered, and distributed not only the property therein particularly described, but also "all other the estate of the deceased in the State of Minnesota." (See Record, pp. 17 to 19 for final decree). But, if it were not so broad in its terms, that the adminis-

trator would not have continued in office was settled by 40 Minn. 296, *State v. Probate Court,* cited above, long before the decision in *State ex rel Matteson v. Probate Court of Ramsey County.*

It was also suggested by the plaintiff, by way of argument, that when the administrator ceases to exist or is discharged the sureties on the administration bond are discharged and thereafter there can be no suit on the bond, and therefore the administrator must have continued in office. The administrator in this case being a Trust Company, by law was exempt from giving bond and in fact gave none. But it would make no difference if it were otherwise. The liability of the administrator on his bond is a personal liability—a liability imposed upon him personally for damages resulting from a failure to perform the duties of administrator, and to be paid, not out of the estate which he represents, but out of his individual estate. The final decree operates to change every liability of the administrator from an *official* liability to a *personal* one.

Woerner's Am. Administration (2 ed.) Vol. 2, *p. 1248, Sec. 569.

67 Cal. 279, *Melone v. Davis.*

The opinion of the Circuit Court of Appeals, as far as it bears upon the question of the continuance of the administrator in office, is fully met by the Minnesota decisions above cited, and particularly by 87 N. W. Rep. 783, *State ex rel Matteson v. Probate Court of Ramsey County.*

The second ground of defense is that plaintiff's claim is barred by reason of the failure to present it to the probate court, or to commence the action, within the time limited by order of the probate court for creditors to file claims, and if not, then it is barred by reason of the failure to present the claim to the probate court, or to commence the action, prior to the close of the administration.

It is settled that the failure to so present the claim to the probate court, according to the law of Minnesota barred the claim so that the plaintiff has no right which he could enforce in any court of Minnesota.

Sec. 4511, set out above.

39 Minn. 212, *Fern v. Leuthold.*

47 Minn. 382 (384) *Hill v. Nichols.*

61 Minn. 366, *Hantch v. Massolt.*

66 Minn. 246 (249, 250) *State v. Probate Court of Rock County.*

78 N. W. Rep. 95 (98) *Fitzhugh v. Harrison.*

We understand the plaintiff to concede that the claim is barred according to the law of Minnesota and that he has no right which he can enforce in any State Court. But he contends that the Minnesota Statute does not bind him in the Federal Court. Therefore the question for consideration is: Do the Statutes of Minnesota, particularly Sec. 4511 above set out, bind non-residents of Minnesota in the Federal Courts? The deceased resided in Minnesota at the time he gave the obligations sued on, continued to reside there until his death, and the law of Min-

nesota as to the estates of deceased persons and the rights and remedies of creditors against the same, remained unchanged. Hence there is no question of violation of contract rights, ant the sole question is: Does the mere fact that plaintiff is a non-resident and sues in a Federal Court render the Minnesota Statute nugatory?

The plaintiff has only the personal promise of the deceased to pay the debt. He has no contract right or claim to have his debt paid out of the property of the deceased, except in so far as the law of Minnesota is part of the contract. His right to have his debt paid out of the estate of the deceased is only such as the law gives. The State has the right to provide what property left within its borders, upon the death of a resident of the State, shall be applicable to the payment of the debts of the deceased: to provide to what extent such property shall be taken for the payment of such debts, and to provide in what manner and within what time such property may be applied to the payment of such debts. Congress has no power to legislate concerning the matter, or, if it has, it has not seen fit to exercise the power, but has left the State free to act unrestrained by congressional legislation. There is no general law on the subject which can override the express statutory enactments and decisions of the courts of Minnesota. Hence, when a Federal Court comes to investigate the question of plaintiff's right it necessarily looks to the law of Minnesota for the measure of that right, because there is no other law giving plaintiff any right against the estate of the deceased.

While the Federal Court may proceed according to its own methods of investigation in any investigations it may make to determine whether the right of action exists which plaintiff claims to have, yet it cannot create nor confer that right of action, but must find it existing in the law. Inasmuch as there is no law except the law of Minnesota, giving the creditor the right to have the property of the deceased in Minnesota applied to the payment of his debt, the Federal Court must find that right of action to exist in the law of Minnesota. Otherwise it must declare that there is no right of action. So far as the Statute of Minnesota is one conferring, creating or limiting the right of the creditor to have his debt paid out of the property of the deceased, and is not one merely providing a method of enforcing a right otherwise existing, it is of the substance of the right of action and not a matter of remedy, and is necessarily binding on the Federal Court. This is true whether the Statute be viewed as a statute of limitations or as a rule of property, because in either case no right of action exists unless the facts bring the case within the terms of the statute. The courts generally have held similar statutes to be binding on the Federal Courts.

72 Ala. 314, *Jones v. Drewry*, is a case involving a statute in substance the same as the Minnesota statute and in which this same question was presented to the Court. The court examined at length the question here presented and held that the statute was binding on the non-resident in the Federal Court.

It also showed wherein the decisions cited in support of the contrary contention are not applicable.

10 Fed. Rep. 53, *Pulliam v. Pulliam*. In this case, reconsidering a former decision by him in the same action, Judge Hammond, on page 73 to 79, examines and discusses the grounds upon which such statutes stand, more fully than any other opinion we have seen. He concludes that they are not only statutes of limitations, but also rules of property, and binding on the Federal courts, and that the contrary contention finds no support in Union Bank v. Jolly, Payne v. Hook and other cases cited.

27 Fed. Rep. 405, *Dodd v. Ghiselin*, opinion by Brewer, J., holds that the laws of the state for settlement of estates of deceased persons are binding on the Federal courts.

19 Fed. Cases (Case No. 11376), page 1260, *Pratt v. Northam*, opinion by Justice Story, holds a like statute to bind the Federal courts, even in equity. He says (page 1261):

"This statute of limitations as to executors and administrators, is not created for their own security or benefit; but for the security and benefit of the estates, which they represent. It is a wholesome provision, designed to produce a speedy settlement of estates, and the repose of titles derived under persons who are dead."

63 Fed. Rep. 208 to 213, *Walker v. Brown*. The court of appeals, Eighth Circuit, discusses the jurisdiction of the federal courts over estates of deceased persons. Says the court: "In other words, the jurisdiction of these courts over the administration of

estates is less extensive than that which was formerly exercised by the English chancery courts. Their jurisdiction at best is but a limited one, depending as it does in all cases either upon the existence of a federal question or diverse citizenship; and they are bound, like the state courts, to render a faithful obedience, within certain well-defined limits, to local administration laws that have now rendered it possible to administer estates fairly and equitably without invoking the extraordinary powers of a court of chancery."

5 Peters, 523, *Smith v. Union Bank*. Held, rights of creditors in estates of deceased persons depend on the law where administration is had.

4 How. 498, *Aspden v. Nixon*: "It is proper, however, to remark in this connection, that the courts of the United States held in Pennsylvania are administering the laws of that state, and are bound by the same rules governing the local tribunals; and that by those laws a devisee, before he can take a legacy, must give security that if any debt or demand should afterward be recovered against the estate of the testator, the devisee shall refund."

76 U. S. (9 Wall.) 754-5, *Walker v. Walker's Exr.* "The circuit courts of the United States, with full equity powers, have jurisdiction over executors and administrators, where the parties are citizens of different states, and will enforce the same rules in the adjustment of claims against them that the local courts administer in favor of their own citizens."

88 U. S. (21 Wall.) 280, *Yonley v. Lavender*: "The administration laws of Arkansas are not merely rules of practice for the courts, but laws limiting the rights of parties, and will be observed by Federal courts in the enforcement of individual rights."

113 U. S. 449, *Morgan v. Hamlet*, held a statute, substantially like the Minnesota statute, to be binding on the Federal court. It was an action in equity. The court said (page 451): "In Arkansas it appears that there is a special statute of limitations governing claims against estates of deceased persons, commonly called the statute of non-claim. It is as follows:

'All claims not exhibited to the executor or administrator, as required by this act, before the end of two years from the granting of letters, shall be forever barred.'" Again (page 452):

"Whatever its description, it was a claim against the estate of John G. Morgan, and for which his personal representative was in the first instance liable; and the statute is a bar to every such claim, unless presented within the time prescribed."

132 U. S. 484, *Rio Grande R. Co. v. Gomila*: "We do not question the general doctrine laid down in Yonley v. Lavender, 88 U. S. 276, 279, 280, to the effect that the administration laws of a state are not merely rules of practice for the courts, but laws limiting the rights of the parties, and will be observed by the Federal courts in the enforcement of individual rights, and that those laws upon the death of a party withdraw the estate of the deceased from the operation of the execution laws of the state, and place them in the hands of his executor or administrator for the benefit of his creditors and distributees. * * * We do not recall any case now where the Federal courts have not paid respect to the principle that all debts to be paid out of the decedent's estate are to be established in the court to which the law of his domicil has confided the general administration of estates, etc."

The following decisions are pertinent to this proposition:

172 U. S. 358 *M. K. & T. Trust Co. v. Krumseig*: "We think it a satisfactory reply to such a proposi-

tion that the complainants in the present case were not seeking equity, but to avail themselves of a substantive right under the statutory law of the state. It seems to be conceded, or, if not conceded, it is plainly evident, that if the cause had remained in the state court where it was originally brought, the complainant would have been entitled, under the public policy of the State of Minnesota, manifested by its statutes as construed by its courts, to have this usurious contract canceled and surrendered without tendering payment of the whole or any part of the original indebtedness. The defendant company could not, by removing the case to the Federal court, on the ground that it was a citizen of another state, deprive the complainants of such a substantive right. With the policy of the state legislation the Federal courts have nothing to do. If the states, whether New York, Arkansas, Minnesota, or others, think that the evils of usury are best prevented by making usurious contracts void, and by giving a right to the borrowers to have such contracts unconditionally nullified and canceled by the courts, such a view of public policy, in respect to contracts made within the state and sought to be enforced therein, is obligatory on the federal courts, whether acting in equity or at law. The local law, consisting of the applicable statute as construed by the supreme court of the state, furnishes the rule of decision."

72 U. S. (5 Wall.) 419, *Ewing v. City of St. Louis*: It was an action in equity for relief from an assessment for local improvements. The court said: "The complainant can ask no greater relief in the courts of the United States than he could obtain were he to resort to the state courts. If in the latter courts equity would afford no relief, neither will it in the former."

80 U. S. (13 Wall.) 243 *Ex parte McNiel*. In an action to recover a penalty under pilot regulations established by the state, it was said with reference

to federal courts: "Jurisdiction having attached, his case is tried there upon the same principles, and its determination is governed by the same considerations, as if it had been brought in the proper state tribunal of the same locality."

103 U. S. 559, *Ouachita County v. Wolcott*, seems to us to fully sustain our contention that this statute is binding against the non-resident in the Federal Court, and to answer the objections urged by plaintiff and the Circuit Court of Appeals. In that case a failure to present a warrant to the county court within the time fixed by an order of court made pursuant to statutory authority, was held to be a defense to an action commenced in the federal court to recover on the warrant, though the action was commenced in the Federal Court before the expiration of the time fixed by the order of the court.

Plaintiff argued, and the Circuit Court of Appeals seemed to accord some weight to the argument, that the Minnesota Statute attempts to prohibit the non-resident creditor from resorting to the federal courts and therefore is invalid as to the non-resident in the federal court. We submit that the argument is without foundation. Such is not a necessary interpretation of the statute, but if it were the Federal Court would disregard only the provision prohibiting a resort to the Federal Court and would enforce every other provision of the Statute. The Statute does not in terms forbid the non-resident creditor to go into the Federal Court. The state has no power over the Federal Courts, neither to confer nor to take away jurisdiction. But it has power to legislate

concerning the property of its own citizens within its own borders and for its own courts, and it will not be presumed that it has attempted to do anything more. The statute has created the right of the creditor to have his debt paid out of the property of the deceased, but upon the condition that it be presented within the specified time, and has prescribed the state courts in which the remedy for the enforcement of that right must be had. This clearly it was competent for the state legislature to do. If that right is one for which a remedy is afforded in the federal courts under the jurisdiction conferred on these courts by the constitution and laws of the United States, the creditor may seek his remedy in the federal court. But the creditor's right depends upon the same condition in whatever court he seeks his remedy. If he would seek his remedy in a federal court, he must do so within the same time he is required to take it if he should resort to the state court.

If the Statute does attempt to prevent the creditor from finding his remedy in the Federal Court, then the matter comes to this: The Statute gives the creditor a right to have his debt paid from the estate of the deceased upon condition, first, that it shall be presented within the prescribed time, and second, that if disputed it shall be tried in the State Court. In that case the Federal Court will disregard the condition requiring the controversy to be tried in the state court, but enforce the condition as to time.

10 Fed. Cases (No. 5630) p. 382, *Goshorn v. Goshorn*. In Ohio a statute required an action to charge the widow and heirs for the debt of the ancestor to be commenced within one year, and required the action (if more than one person were liable) to be filed on the chancery side of state "Court of Common Pleas." Such an action was commenced on the equity side of the United States Circuit Court, and it was held that the statute prescribing the one year limitation was binding on the Federal Court.

In 80 U. S. (13 Wall.) *Chicago, etc., R. R. Co. v. Whitton*, where the intent to give the right of action only in the state court was clear, the right was upheld, but the restriction was disregarded, the court said, (pages 285, 286):

"It is undoubtedly true that the right of action exists only in virtue of the statute, and only in cases where the death was caused within the state. The liability of the party, whether a natural or artificial person, extends only to cases where, from certain causes, death ensues within the limits of the state. But when death does thus ensue from any of those causes, the relatives of the deceased named in the statute can maintain an action for damages. The liability within the conditions specified extends to all parties through whose wrongful acts, neglect or default death ensues, and the right of action for damages occasioned thereby is possessed by all persons within the description designated. In all cases, where a general right is thus conferred, it can be enforced in any Federal court within the state having jurisdiction of the parties. It cannot be withdrawn from the cognizance of such Federal Court by any provision of state legislation that it should only be enforced in a state court. The statutes of nearly every state provide for the institution of numerous suits, such as for partition, foreclosure,

and the recovery of real property in particular courts and in the counties where the land is situated, yet it never has been pretended that limitations of this character could effect, in any respect, the jurisdiction of the Federal court over such suits where the citizenship of one of the parties was otherwise sufficient. Whenever a general rule as to property or personal rights, or injuries to either, is established by state legislation, its enforcement by a Federal court in a case between proper parties is a matter of course, and the jurisdiction of the court, in such case, is not subject to state legislation."

See also 103 U. S. 559, *Ouachita County v. Wolcott.*

We submit that counsel for the plaintiff and the Circuit Court of Appeals have a wrong understanding of the provisions in question, Secs. 4509, 4511 above set out. Those sections provide that claims "shall be presented for examination and allowance"; also "that the probate court may require satisfactory vouchers or proofs to be produced in support of any claim." The probate court is not required to receive any voucher, evidence or proof other than the sworn statement of account. The probate court has no power or authority to require or order pleadings to be made, to call a jury, or to try a disputed claim upon the evidence of witnesses—certainly it is not required to do so. Neither administrator nor creditor can compel the probate court to grant any trial of the disputed claim according to the course of the common law or equity. In the matter of the presentation of claims to the probate court and their allowance that court is simply "auditor of claims," performing no "judicial function" in any proper

sense of the term. Such allowance of claims is not the "establishment of claims" which this court has held a state can not limit to its own courts.

103 U. S. 559, *Ouachita County v. Wolcott* is a case in which the court performed substantially the same functions as to claims against the county as the probate court of Minnesota does in the matter of claims against the estate of a decedent. The court held that it was valid legislation, and the non-resident bound to present the claim within the time fixed by the order of court, and that a failure to do so would be a bar to suit in the federal court.

In 133 U. S. 473, *Delaware County v. Diebold Safe and Lock Company*, the proceedings before the county commissioners for the allowance of claims were much more nearly assimilated to proceedings in actions at law than the proceedings in the probate courts of Minnesota. It was held that the controversy of which the federal courts have jurisdiction arose not on the hearing of the claim by the board of commissioners, but on the appeal from their allowance or disallowance of the claim.

135 U. S. 467, *County of Upshur v. Rich* also supports this proposition.

The requirement that claims shall be presented to the probate court cannot be objectionable. That is the only court that has power to order and direct their payment in the course of administration. No federal court has ever failed to respect such requirement. In case of the judgment we complain of and

have brought to this court for review, the federal court ordered the judgment to be presented to the probate court as a claim against the estate. By what authority have the state and its court been deprived of the right to say within what time it will receive such claims?

The Act of Congress provides that the circuit courts of the United States shall have jurisdiction "of all suits of a civil nature, at common law or in equity, where the matter in dispute," etc. This presentation of the claim to the probate court for allowance cannot be said to be a suit of a civil nature, at common law, or in equity. It does not meet one of the requirements of such a suit. There is no suit until an appeal. The appeal is the commencement of the suit. Then pleadings are made, parties have the right to demand a trial, to call witnesses and have the matter in controversy judicially determined. It is only this judicial determination of issues between parties after examination before a court in a proceeding in which the parties have the right to call witnesses and introduce evidence, and to be heard which it is not competent for the state to confine to its own courts.

In *Yonley v. Lavender*, *supra*, the court adverts to the analogy between probate proceedings and proceedings under a state insolvency law. The analogy between probate proceedings in Minnesota and Receivership proceedings, or proceedings under a state insolvency law is perfect. The probate court is a court not only of plenary, but of exclusive juris-

diction of the estates of deceased persons. It seizes the property of the deceased and through its officer, the administrator, applies it to pay all lawful claims against the property of the deceased and then turns over to those entitled, free from all claims, what remains. It is a proceeding *in rem*. See 61 Minn. 343, *M'Namara v. Casserly*, for a clear statement of the character of probate proceedings in Minnesota. If a court appoint a receiver, it can (in the absence of a statute to the contrary) require all claims against the property to be filed in the court appointing the receiver, and require them to be so filed within any reasonable time it may fix; may try all disputed claims if it see fit, and may refuse to allow any claim not so filed and proven to share in the distribution of the fund—149 U. S. 473, *Porter v. Sabin*. In such case the creditor would have no right to insist on filing and proving his claim by sueing the receiver in a federal court. He would be compelled to file his claim in the court appointing the receiver, and to file it there within such time and make such proof of its validity as that court should order. The court has this power because it has the fund in its grip and the right to distribute it. The court is subject to the power of the legislature, and as to receivership proceedings, the legislature may regulate the procedure in its courts. Why may not the legislature do that which the court otherwise might do, i. e., require the claims to be filed in the court appointing the receiver, and the question of their validity to be tried in that court as a condition to sharing in the distribution of the fund?

Probate proceedings, in Minnesota, are nothing more nor less than a receivership of the property of the deceased for the benefit of his creditors. The jurisdiction given probate courts by the constitution is jurisdiction *in rem*. The probate court has no jurisdiction to try any question "at law" or "in equity" arising between parties. It simply seizes the property and disposes of the property. 61 Minn. *M'Namara v. Casserly, supra.* Of necessity claims against the fund (the estate) must be presented to that court. Why may the state or the court not provide the time within which the claim shall be presented?

Administration in Minnesota is not the common law administration; the administrator is not the common law administrator; the rights of creditors are not the rights of creditors at common law; the presentation of a claim to the probate court is not in any sense the equivalent of the suit at common law or in equity against the administrator. The state, under its constitution and statutes and through its court has seized the estate of the deceased and has all the powers to dispose of it that a court of competent jurisdiction has to dispose of property taken into its control in a receivership proceeding. It has required that any claim, in order to share in the fund, must be presented and passed upon in a summary way in its probate court within a fixed time. That provision is binding on the world. But it has provided also that if a controversy shall arise as to whether the claim has been properly admitted to share in the fund, the parties

shall be entitled to a trial of that controversy according to the course of the common law, and that it shall be tried in the court of common law jurisdiction. Secs. 4665, 4668, 4669, 4670, 4672, 4673, 4675, 4675, 4677, 4678, cited above. It is this controversy, which the statute gives the right to have tried according to the course of the common law, of which the federal courts have jurisdiction. It arises with the right to appeal which is given by the statute. If the administrator appeals, the non-resident may remove the appeal to the federal court. If the creditor appeals he may do so by instituting his action in the federal court.

This further suggestion will show that it is not the intent nor effect of these statutory provisions to prohibit a resort to the federal courts. No statute in terms inhibits suits against the administrator in any federal court. If such right to sue exists and judgment were obtained against the administrator in the federal court and presented to the probate court within the time fixed by its order, it would be compelled to receive it as a claim against the estate.

We submit that the Circuit Court of Appeals has taken an entirely wrong view of the powers of the federal courts in such matters. The jurisdiction of the federal court is confined to "suits of a civil nature at law or in equity." It has no jurisdiction to administer the estate; no jurisdiction to determine how long the administration shall be kept open; no jurisdiction to provide within what time claims shall be filed; no jurisdiction to receive claims against the

estate nor to allow them in the same way that the probate court has; no jurisdiction to provide when final settlement shall be made, nor to supervise or control the state court in the administration of the estate. The federal court is not a probate court and has no probate jurisdiction. What it can do is in aid of and subordinate to the administration proceeding theretofore commenced and pending in the probate court. When in the course of the administration the right to institute a suit of a civil nature accrues the federal court may entertain that particular suit. That is the beginning and the end of its jurisdiction. In the Minnesota probate proceedings that right to institute a suit of a civil nature on claims of creditors is the statutory right of appeal.

The Circuit Court of Appeals says that "federal courts must be conceded the same power, as respects the claim of a non-resident creditor, to allow it within eighteen months, which is conferred upon the probate courts of the state"; also "that the right of a non-resident creditor to sue in the federal court cannot be made to depend on the length of time that the probate court happens to allow for making a final settlement"; also "the right of a non-resident creditor to bring his action in the national court, ought not to be conditional or made to depend upon the time that a local court chances to approve a final settlement, when the time of such approval rests in its discretion and is largely a matter of convenience."

The effect of the decision of the Circuit Court of Appeals is to nullify the statutes of the state and the acts of the state court and to assert in the federal

court a supervisory power over the probate courts of the state. If claims can be allowed against the estate by the federal court within eighteen months, it follows that the administration of the estate must be kept open for at least eighteen months and claims must be received for eighteen months, regardless of the policy of the state requiring speedy settlement of estates and regardless of the statutes providing for speedy administration. If claims which never have been presented to the probate court within the time fixed by its order can be allowed by the federal court long after the time fixed has expired, it follows that the federal court can override the order of the probate court and the statute of the state. If an administrator can be sued and a claim allowed in the federal court after the probate court has closed the administration, it follows that the federal court may disregard the judgments of the probate court and the statutes of the state, and that the probate court is powerless to administer and the state without authority to provide for admisistration of the estates of its own citizens within the state. This decision still leaves the federal courts powerless to administer, but makes them mighty to prevent administration. The Circuit Court of Appeals impliedly admits that it is bound by the eighteen months limitation, i. e., the longest time the statute permits the probate court in any case to receive claims. Why is the federal court bound by one limitation of the statute and not by another? If the state has the right to say that claims must be presented within eighteen months, why not the right to say within six months? If the

right to say they must be presented within six months, then why not within such time not less than six months as the probate court shall by order and notice fix, having due regard to the condition of the estate.

The Circuit Court of the United States, as to many controversies over which it has jurisdiction, simply stands in the place of the state court having concurrent jurisdiction, administers the same law and declares the same right, though proceeding by its own method of procedure. As we have said, the controversy of which the federal court has jurisdiction in the matter of claims against the estates of decedents in Minnesota is the controversy which would arise on appeal to the district court of the state. But we conceive that if it be admitted that the Circuit Court of the United States stands in the place of the probate court the result would be the same in this case. The statute requires the probate court by order to fix a definite time, not less than six months, within which claims shall be presented. The creditor has a legal right to present the claim within that time, and if so presented the probate court must receive it. If the federal court stands in the place of the probate court, then the creditor has the legal right to present the claim by an action in the federal court within the time fixed by the order. But the creditor has no such legal right to have the probate court receive it after the time fixed in the order. Whether the probate court will receive it later is a matter of discretion, depending on the condition of the estate and the administration proceeding, and

somewhat upon the reason for the creditor's neglect to present it within the time limited. The federal court has no control of the estate, knows nothing of its condition, and is in no condition to exercise a discretion in the matter, which seems to us sufficient reason for denying to that court the powers of the probate court concerning this matter. But if it be that the power to exercise this discretion must be accorded to the federal court, then that power should be invoked by a bill in equity setting forth facts upon which the court could base an exercise of that discretion. To render judgment in an action at law, allowing the claim as a matter of right is not an exercise of discretion.

The federal court has not been content in this case to exercise the same powers that the probate court has in the matter of allowing claims, but has exceeded those powers in this: It has allowed a claim, not in its discretion, but as a matter of right, not only after the time fixed by the order had expired, but months after the estate had been finally settled and the administration closed.

Some or all of the following cases probably will be urged upon the court by the defendant in error in support of the judgment. But we think for the reasons hereinafter stated they are not sufficient to sustain it.

17 Fed. Rep. 820, *Chevrett v. Morgan*. In this case it was conceded (and not an issue in the case) that plaintiff was not required to resort to the Probate Court to establish the claim. It was not urged

that the statute was a statute of limitation, so far as it prescribed a time for proving the claim. The defense made was, that the action being an equitable one the failure to present the claim to the Probate Court in the administration proceedings was laches sufficient to bar the action. The court held it not to be laches as matter of law, because evidence might show a sufficient excuse. The court also held that statutes of limitation do not bind Federal courts of equity. It cites as authority, 1 Fed. Rep. 692, *Johnston v. Roe*. An examination of that case will disclose that the sole ground of the decision was, that the state statutes of limitation are not binding on the Federal courts in equity. It also cites as an authority to the same point, 14 Fed. Rep. 886, *Tice v. School District*, but an examination of the opinion in this case will show that it holds squarely to the contrary.

18 Fed. Rep. 291, *Hartman v. Fishback*. This case, perhaps, fairly may be considered to support the plaintiff's claim. It stands alone, and is the decision of a single district judge. There is this difference, however, between the Minnesota statute and the Wisconsin statute there considered, which seems to have been the basis of the decision in the case. The Wisconsin statute contains a general prohibition of suits against executors and administrators, *and does not in terms confine the prohibition to state courts* (R. S. Wis. 1878, Sec. 3845), while the Minnesota statute *prohibits suits in the state courts only* (Sec. 4514). But in any event this

decision is not sound. It assumes that to sustain the statutory bar necessarily is to hold that the claimant could not go into the Federal court even within the time allowed to proceed in the state court. This is not true. The "time limit" affecting the cause of action may operate, though the "court limit," affecting merely the remedy, may not, and the federal courts generally hold the time limit operative though they disregard the limitation on the choice of the forum. This decision treats the statutory provision "as a special course of procedure" provided by the statute. But the time within which the proceeding must be instituted is not a part of the proceeding. We are unable to understand how a limitation which results in a destruction of the cause of action, which prevents a suit being maintained, not alone in some special tribunal, but in any and every tribunal subject to the control of the sovereignty prescribing the limitation, can be held anything other than a statute of limitations. It does not appear that there was in Wisconsin the same provision for a trial on appeal as in Minnesota, and if there was it does not appear to have been called to the attention of the court.

The Minnesota Supreme Court has decided that the Minnesota statutes do not provide merely a special procedure but, that they operate as an absolute bar to the cause of action. That settles the construction to be given to the Minnesota statute by this court. The case of Hartman v. Fishback cannot override the Minnesota decisions.

14 Peters 67, *Sugiam v. Broadnax*. The decision in this case did not involve the question of bar by lapse of time. The grounds of the decision are two: 1. By the terms of the sixth section of the state act in question the suit was excepted from the provisions of the sections of the act relied on to defeat the action. 2. The defense that the state statute prohibited suit in Federal court could not prevail, because such provision of the statute was invalid.

18 How. 503, *Union Bank v. Vaiden*, (*Jolly's Exrs.*) In this case upon the death of a defendant, his administrator was substituted and judgment went against him. Pending administration proceedings the complainant filed its bill in equity, based upon the fraud of the administrator, to compel the payment of the judgment out of the funds which the administrator was going to pay over to the heirs. The only point decided was: "The law of a state limiting the remedies of its citizens in its own courts, cannot be applied to prevent the citizens of other states from suing in the courts of the United States in the state for the recovery of any property or money there to which they may be lawfully or equitably entitled."

23 How. 90 *Green's Admx. v. Creighton*. In this case, pending administration proceedings, and while it was yet open to the creditor to prove his claim in the state court, he filed in the United States court, on the equity side, a bill for discovery of assets and to establish his debt. The only defense was that the jurisdiction was exclusive in the state court, which defense was overruled.

7 Wall. 425, *Payne v. Hook.* In this case the complainant filed her bill in equity, against the administrator, seeking relief on the ground of fraud. It was insisted that, because the powers of the state chancery courts to grant like relief did not begin until after a final settlement of the administration, the chancery powers of the Federal courts were likewise limited. This question of jurisdiction of the Federal Equity courts was the question decided.

88 U. S. (21 Wall.) 276, *Yonley v. Lavender.* This case is in truth an authority in favor of our position, rather than against us. It does declare that the creditor may resort to the Federal court to establish his claim but gives full effect to the provisions of the state statutes, and affirms the full power of the state to make such statutory provisions binding on all.

113 U. S. 73, *Hess v. Reynolds.* This case is in accord with Yonley v. Lavender, last referred to, but the only question involved was the right of removal.

119 U. S. 587, *Borer v. Chapman.* In this case, a proceeding in equity, administration proceedings in the state of the domicil of the deceased had been abandoned, and no notice had been given to creditors. It was insisted that ancillary administration proceedings in another state had barred the creditor's claim, but the contention was overruled upon the ground that he had the right to collect his claim in the principal administration, and was not required to resort to the ancillary administration.

143 U. S. 215, *Lawrence v. Nelson*. This was an action in equity to charge the administrator, on the grounds of his fraud, with the payment of a judgment rendered against him as such administrator in an action in which he had voluntarily appeared. It was held that under such circumstances he was bound by the judgment, and that under the decisions of the Supreme Court of Illinois the settlement of the estate in the Probate Court of Illinois was not a bar to the action.

We respectfully submit that the judgments of the Circuit Court and Circuit Court of Appeals should be reversed.

EDMUND S. DURMENT,
ALBERT R. MOORE,
For Plaintiff in Error.

No. 232. 39

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Supreme Court of the United States.

OCTOBER TERM, 1901.

Filed Mar. 8, 1902.

No. 232.

SECURITY TRUST COMPANY, as Administrator of the estate of Sumner W. Matteson, deceased,
Plaintiff in Error,

vs.

BLACK RIVER NATIONAL BANK OF LOWVILLE,
Defendant in Error.

REPLY BRIEF OF PLAINTIFF IN ERROR.

EDMUND S. DURMENT,
ALBERT R. MOORE,
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REPLY BRIEF OF PLAINTIFF IN ERROR.

Counsel for defendant in error in their brief have seen fit to go outside the record and state some things, and insinuate others, relative to the case of *State ex rel. Matteson v. Probate Court of Ramsey County*, which have no foundation in the record in that case, nor in fact outside the record, but exist

only in the imagination of counsel for defendant in error, which requires a statement by us in reply.

The issue in that case was not in any sense a feigned issue. The Supreme Court of Minnesota was not imposed upon. Neither defendant in error, the counsel, nor any other person was kept in ignorance of the proceeding. The action from beginning took the usual and only possible course of such litigation, was contested vigorously and publicly argued in both courts. Likewise the fact that the action was pending and of the argument of the cause in the District Court were published in the daily newspapers in the city where counsel for defendant in error reside. The fact that the relator is a brother to Charles D. Matteson is immaterial. No one except defendant in error or a member of the Matteson family could bring the action, and defendant in error would not do so but was seeking to hold the relator personally liable for the claim. There was ample time after the decision of the Supreme Court became public property, in which counsel could have called the attention of the court to the alleged imposition which counsel now assert had been practiced upon the court and could have applied for a re-argument and an opportunity to be heard. So far as the misnomer in the title as placed on the calendar is concerned, we have this to say: The case was entered in the Supreme Court under its proper title, as the decision of the Supreme Court shows.. Neither counsel had any control of the printing of the calendar and the mis-spelling was that of the clerk or the printer, probably the printer.

It is a little strange that all the courts of Minnesota should be so stupid as to allow counsel to so mislead and impose upon them, when counsel for defendant in error could so readily discover the imposition. The fact that counsel do not attempt to meet the decision, nor its reasoning, but simply to discredit it by such baseless charges is significant that in their opinion the decision is against them and unanswerable.

The facts are these: The counsel for defendant in error had filed in the probate court a certified copy of the judgment now before this court. Then, instead of applying to the probate court for payment of the judgment, *as they say on page 4 of their brief they should do*, they commenced an action in the federal court against the relator in the case of *State ex rel. Matteson v. Probate Court of Ramsey County*, to recover from him as an heir of the deceased. Thereupon said relator attempted, in accordance with the theory of counsel for defendant in error and the decision of the Circuit Court of Appeals, to have the probate court compel the administrator to take steps to pay the judgment. The probate court refused to act, taking the ground that the administration was closed, the administrator *functus officio* and the court without jurisdiction. Thereupon the relator applied to the District Court for a writ of mandamus, which being denied he appealed to the Supreme Court. The case went before the District and Supreme Courts and was heard in both courts in the usual and the only way possible. The appellant urged upon the Supreme Court of the state the

decision of the Circuit Court of Appeals, and made quite as elaborate and strong a brief on the questions involved as counsel for defendant in error made for the Circuit Court of Appeals. In that brief, not only the decision of the Circuit Court of Appeals in this case, but the other authorities cited by defendant in error in their brief in that court were urged upon the Supreme Court of Minnesota. Nothing was concealed from the Supreme Court of the state and both sides of the question involved were as fully and fairly presented to that court as in the Circuit Court of Appeals.

We file herewith, as an exhibit A to this reply brief, the printed record and briefs on which that decision was rendered in the Supreme Court of the State. If it be material, this court can determine for itself from an examination thereof, whether the Supreme Court of Minnesota was imposed upon in that case.

The counsel for defendant in error urges that the opinion in that case is entitled to no weight in the Supreme Court of the United States, because Judges Lochren and Sanborn are familiar with the laws of Minnesota.

However, familiar Judges Lochren and Sanborn may be with the laws of Minnesota, the Supreme Court of Minnesota must be conceded an equal familiarity therewith and its judgment must be accorded greater weight than theirs as to what is the law of Minnesota. Neither the controversy involved in that case nor the parties thereto were then before the federal court. Not only had the state court

the right but it was its duty in that case to expound the law of Minnesota. It announced no new doctrine in that decision, but if it had done so it was an authoritative exposition of the law of Minnesota and ought to be recognized by this court.

Gen. St. 1894, Sec. 4532 referred to by counsel for defendant in error has no application to the questions involved. It has reference to the payment of claims and legacies in the course of administration and before final settlement of the estate.

EDMUND S. DURMENT,
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For Plaintiff in Error.

cf. Sup. Ct. No. 39

(Brf. of Stringer for D.)

Supreme Court of the United States.

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Cl

Filed Feb. 25, 1910

SECURITY TRUST CO., as Administrator, Etc.,
Plaintiff in Error and Petitioner.

vs.

BLACK RIVER NATIONAL BANK OF LOWVILLE,
Defendant in Error.

BRIEF OF DEFENDANT IN ERROR ON PETITION FOR WRIT OF CERTIORARI.

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EVANS & CO., PRINTERS, ST. PAUL.

UNITED STATES CIRCUIT COURT OF APPEALS

EIGHTH CIRCUIT.

SECURITY TRUST COMPANY, AS ADMINISTRATORS, ETC., PLAINTIFF IN ERROR.

VS.

BLACK RIVER NATIONAL BANK OF LOWVILLE, DEFENDANT IN ERROR.

BRIEF FOR DEFENDANT IN ERROR ON PETITION FOR WRIT OF CERTIORARI.

To the action in the Circuit Court two defenses were interposed: First, that the estate no longer existed and the administrator had been discharged; second, that Section 4511 of the Probate Code of Minnesota is a statute of limitation, and the claim of the defendant in error not having been presented to the Probate Court within the six months limited by the judge of probate, was forever barred.

The issues raised were exhaustively argued by counsel for petitioner herein, both in the Circuit Court and in the Circuit Court of Appeals and, again in the Circuit Court of Appeals on motion for re-argument. The cause has been most carefully considered and deliberately decided by both the Circuit Court and the Circuit Court of Appeals.

The petition for writ of certiorari is based on four grounds, as we interpret the petition and brief of plaintiff in error:

1. That the decision of the Circuit Court of Appeals in holding that the cause of action in the Federal Courts is barred by the statutes of Minnesota, is contrary to the decision of the Supreme Court of Minnesota.

2. The decision of the Circuit Court of Appeals in holding

that the estate had not been fully administered and the administrator had not been discharged is contrary to the decision of the Supreme Court of Minnesota.

3. That the decision of the Circuit Court of Appeals is in conflict with the decisions of other Circuit Courts of Appeal and in conflict with the decisions of the Supreme Court of the United States.

4. That another action between different litigants is pending in this court on writ of error in which are involved the same questions as in the case at bar.

If, in the case at bar, this court observes the rule announced in *Forsyth vs. Hammond*, 165 U. S., 506, 514, viz.:

That the circumstances of the case must satisfy the court that the importance of the question involved, the necessity of avoiding conflict between two or more Courts of Appeal, or between Courts of Appeal and the Court of a State, or some matter affecting the interests of a nation in its internal or external relations must "demand the exercise of a power which will be sparingly exercised," we submit that the writ should not issue.

I.

There is no conflict between the decisions of the Supreme Court of the State of Minnesota and the decision of the Circuit Court of Appeals herein.

The cases cited in petitioner's brief from the Supreme Court of the State of Minnesota on Pages 6, 7, 8 and 9, are in no sense in conflict with the decision of the Circuit Court of Appeals herein. Many of the cases cited therein are decisions of the Supreme Court of Minnesota prior to the adoption of the probate code and are wholly inapplicable to the probate code enacted by the legislature of this state in 1889, by virtue of which the entire mode of procedure relative to the administration and

settlement of estates prior to the adoption of the code was essentially and materially changed. And, while we insist that none of the cases cited are applicable to the case at bar, for reasons hereinafter stated, we are unwilling to admit that these decisions are of the full force and effect claimed by petitioner in its brief.

It is true that the Supreme Court in 66 *Minnesota*, 246, holds that a domestic contract which is certain in amount and due absolutely, must be presented to the Probate Court within the time limited by an order of the court made therein "and if not so presented to be forever barred." But

Hantzch vs. Massolt, 61 Minn., 361,

cited on Page 6 of petitioner's brief, the opinion of which was written since the adoption of the probate code and is a construction of Section 4511 set out in petitioner's brief, was an action in equity to recover from the heirs at law to the extent of the assets received from a decedent's estate and the following facts are stated by the Court:

"On March 30, 1892, the Probate Court made its order requiring all claims against the estate to be presented on or before the first Monday of October, 1892, and notice of such order was duly given and thereafter and on September 2, 1893, it made its order of distribution. Six months were given to the creditors of the estate within which to present their claims to the Probate Court."

In construing Section 4511, the Court says, on Page 366:

"If Section 104 (Section 4511 of Statutes of 1894) is construed literally, it would include not only the plaintiff's claim, but all other claims of every kind arising upon contract. Its language is "all" claims arising upon contracts whether the same be due, not due or contingent. These three classes include all possible claims growing out of contracts. If there are no implied exceptions in this statute as to any class of contingent claims, then if a person dies who is a stockholder in a corporation, or had conveyed lands by a warranty deed or signed official bonds as a surety, or given leases for a term of years with covenants to indemnify the lessee against damages by water from the pipes on the demised premises, creditors, obligees and covenanters who would not be barred of all right in redress against his prop-

erty, must hasten to the Probate Court and prove their claims within the eighteen months from the giving of the notice of the order limiting the time to press its claim against the estate. * * * * * The statute provides for the payment of all claims which are certain and liquidated, whether due or not due, also for contingent claims which become absolute and capable of liquidation within the eighteen months allowed for presentation and proof of claims."

It is true the issue in this case was whether on a contingent claim not having been presented at any time to the Probate Court, an action in equity would lie against the distributees after the claim had become absolute. But there is no suggestion under Section 4511 of any time other than that limited by the order of the judge of probate, and the clear holding of the case is that, notwithstanding six months' notice is given as required by order of the judge of probate within which to present claims, they are not barred if presented within the maximum time given by the statute, namely, eighteen months from the date of the entry of the order of publication.

But whatever may be the decision of the Supreme Court of this state in the construction of Section 4511, it is a fact that no decision has been rendered by the Supreme Court of the state affecting any contracts other than contracts *made or to be performed within the State of Minnesota.*

An examination of the cases cited in petitioner's brief will show that the decisions therein affect only contracts made or to be performed within the state. There is no adjudication of the Supreme Court of this state, within our knowledge, holding that Section 4511 is applicable to commercial paper made or to be performed without the state. Nor do we know of any decision of any Federal Court holding that such commercial paper is subject to the provisions of a probate code enacted for the speedy settlement of estates of a decedent.

Reference to Pages 2 and 3 of the transcript of the record in the Circuit Court of Appeals shows that the contracts in writing on which this action was brought were negotiable promis-

sory notes made and payable at Decorah, Iowa, and are in no sense contracts of the State of Minnesota, and we insist that such commercial paper is not subject to the limitations prescribed by the probate code of the State of Minnesota. In

Suydam vs. Broadnax, 14 Peters, 67,

referring to the probate code of the State of Alabama, this Court say:

"This is a statute which, by the exemption it gives to executors and administrators from suit, would seem to imply a denial to creditors of the intestate of the right to sue without respect to the foreign country or state in our own union *where the debt was contracted. It is a general statute without direct application to contracts made out of Alabama, and its construction cannot be extended to such contracts.* A sovereign state and one of the states of the Union, if the latter were not restrained by constitutional prohibitions, might, in virtue of sovereignty, act upon the contracts of its citizens wherever made and discharge them by denying a right of action upon them in its courts. But the validity of such contracts as are made out of the sovereignty or state would exist and continue everywhere else according to the *lex loci contractus.* This shows the reason for, and force of, the rule just given, *and it may be laid down as a safe position that a statute discharging contracts or denying suit upon them without the particular mention of foreign contracts, does not include them.*"

"The Eleventh section of the act to establish the judicial courts of the United States carries out the constitutional right of a citizen of one state to sue a citizen of another state in the Circuit Court of the United States, and gives to the Circuit Court "original cognizance concurrent with the courts of several states of all suits of a civil nature at common law and in equity." It was certainly intended to give to suitors having a right to sue in the Circuit Court, remedies co-extensive with these rights. These remedies would not be so if any proceeding under an act of a state legislature to which a plaintiff was not a party, exempting a person of such state from suit, could be pleaded to abate a suit in the Circuit Court."

In *Van Reimsdyke vs. Kane*, 1 Gall, 371, Judge Story says:

"I held it to be a legitimate inference from the doctrine established that a contract made in a foreign country cannot be discharged by a positive regulation of another court to which the parties have not bound themselves to submit. In controversies affecting citizens of other states and in any decree arising from

local regulations as, for instance, *foreign contracts of a commercial nature*, I think it can hardly be maintained that the laws of a state to which they have no reference, however narrow, injudicious and inconvenient they may be, are to be the exclusive judges of the judicial decision. *Such a construction would defeat nearly all the objects for which the constitution has prescribed a federal court.*"

The supreme court of the state of Minnesota has never announced, so far as we have been able to ascertain, a contrary doctrine, and the question upon facts similar to those in the case at bar, has not been presented to that court.

A perusal of section 4509, set forth in petitioner's brief herein, will show conclusively that such section does not contain a single characteristic of a statute of limitations. It is flexible in its terms, leaving to the probate court to say within what time claims must be presented or be barred in that court; making it discretionary with the court whether the bar of the statute, so far as that court is concerned, may be removed or not, and making the limitation depend on conditions and the will of the court, whether it shall be six months, twelve months or eighteen months. We do not raise the question, for it is not in the case at bar, whether a statute absolute in terms, that domestic contracts must be presented within eighteen months or are barred is a statute of limitations which must be observed by this court; but section 4509 makes no limitation by the legislature and delegates to an individual to say what shall be a limitation on the presentation of claims. It substitutes for the will of the legislature, the caprice of an individual and we submit that if the power vests in the legislature to delegate authority to an individual to prescribe six months period for the presentation of claims, domestic or foreign, it may well exercise the same power to limit the presentation of claims to six weeks; and, indeed, since the commencement of this action, said section 4509 has been amended by the legislature of this state by the adoption of the following proviso, viz.:

"Provided, that the judge of probate on proper proof by affidavit of the executor or administrator that there are no debts against the estate, may limit the time in which creditors may present their claims, to three months."

We think it will not be contended that such a limitation, even under the conditions named (that the administrator should present affidavit to the court of no claims existing) would apply to commercial paper running the ordinary time of three, six or nine months, made and to be performed in the city of New York, and that the holder of such paper would be excluded from participation in the distribution of an estate in Minnesota, if his claim was not filed within the three months. It would be a most dangerous doctrine, the application of which would, in many instances, be an absolute denial of justice.

II.

The decision of the circuit court of appeals holding that the estate had not been fully administered and the administrator had not been discharged is in no wise in conflict with the decisions of the Supreme Court of this State.

The cases cited on pages 9, 10 and 11 of petitioner's brief might, if other conditions existed, be applicable; but, from the very facts found by the court in this case, they are not applicable, for the reason that the facts show, beyond the peradventure of a doubt, that the estate had not been fully administered and the administrator had not been discharged. The facts found by the court, recited on page 381 of volume 104 of Federal Reporter, in the Dent case, are that the probate court entertained a petition for an order amending and correcting its final decree, etc.; that on December 23, 1896, within a few days of the commencement of this action, the administrator executed an assignment of a certificate of stock; that the administrator held collateral security in its own hands belonging to the estate, undistributed, and still retained the same at the time of the commencement of this action, and other facts which show clearly that the admin-

istrator and the probate court, as stated by the court below, never contemplated that the administrator was discharged and the court had ceased to exercise jurisdiction over the cause. In counsel's brief it is claimed that the entry of the decree of distribution terminated the official life of the administrator and that thereafter the probate court could exercise no jurisdiction either over the administrator or over the estate. This position, surely, is unfounded, for section 4532 of the statutes of 1894, being Section 124 of the probate code, provides:

"Section 4532. Further Order of Distribution, When.—If the whole of the debts and legacies were not paid by the first distribution and if the whole assets have not been distributed, or if other assets afterwards come to the hands of the executor or administrator, the Probate Court may, from time to time make further order for distribution of the assets."

The above quoted section clearly contemplates, and expressly provides, for different orders or decrees of distribution, and the facts as stated and found by the lower court are conclusive as to the assets still remaining in the hands of the administrator, of the acts done by both the administrator and the Probate Court relative to the estate; and, such being the case; the estate not being fully administered there is no conflict whatsoever between the decision or decisions of the Supreme Court of the State of Minnesota and the decision of the Circuit Court of Appeals, the former being based on the assumption that the estate had been fully settled. An examination of the cases cited on Pages 10 and 11 of petitioner's brief, we think, clearly bears out our assertion in this respect.

Counsel, however, on page 13 of their brief, made a statement which we cannot permit to stand without contradiction. They say that "the assumption of the Court of Appeals that the Probate Court was of opinion that its jurisdiction continued is unfounded in fact, for (though it does not appear in the record it is true), in this Black River National Bank case an application had been made to the Probate Court for leave to present this claim just before commencing suit in the Circuit Court and the Probate

Court denied the application on the ground that it no longer had jurisdistion, the estate having been finally settled."

We have to say that a petition was presented to the Probate Court by the Black River National Bank for leave to file the claim of the defendant in error herein, and that it should be paid in the due course of administration of the estate; that said petition was entertained by the Probate Court, an order to show cause why it should not be granted issued by the Court to and served by order of the Court upon the administrator and heirs at law, and upon the return of said order to show cause among other objections, counsel for the administrator objected to the granting of said petition on the ground that petitioner had been guilty of laches in not filing its claim in the Probate Court within the six months limited by order of the judge thereof. The order entered was a denial of the petition without any expression on the part of the court as to the ground upon which the petition was denied; and in the argument before the Circuit Court of Appeals, counsel for petitioner insisted that defendant in error in that court was precluded from having any standing in the Federal Court because it had presented its petition to the Probate Court; and its remedy was by appeal from the order of the Probate Court; while the position of counsel now is that defendant in error never gained access to the Probate Court, and such access was refused on the ground that said Probate Court no longer had jurisdiction of the estate, or of the administrator.

It is further claimed that the reason assigned by the Circuit Court of Appeals for its decision is in conflict with the decisions of the Supreme Court of the state *in re*

Schmidt vs. Stack, quoted on Page 12 of brief.

No such conflict, however, exists. Under a decree of distribution, the title and right of possession are transferred to the devisee, and so the Circuit Court of Appeals held. Such property may cease to be the property of the estate and a cause of action may lie against the administration for its distribution. The Court say:

"If such *action* is necessary, resort must be had to some other forum, for the Probate Court has no further jurisdiction."

The Court does not here refer to jurisdiction of the person of the administrator, but jurisdiction over the property, as is clearly indicated in the first portion of the decision. The order of distribution in nowise terminates the life of the administrator for, under Section 4532, there may be several distributions. The Court say if an "*action*" is necessary, but no *action* can be commenced or maintained in the Probate Court. Proceedings may be instituted to call an administrator to account for disobedience to the order of the court, but this is in no sense an action. The entry of an order of distribution does not terminate the jurisdiction of the Probate Court over the administrator, but there vests continuously in the Probate Court the power to discipline its officers and those within its jurisdiction for refusal to obey its proper orders and its lawful decrees. The vice of petitioner's position is that it assumes that because an action will lie in the District Court that, therefore, the administrator is absolved from all obligation to the Probate Court. The Supreme Court of this state has never said that the Probate Court is without authority to compel obedience to its orders and its decrees, or to impose a penalty for refusal of compliance with such orders and decrees.

In the case cited, the Supreme Court held that the District Court did not have jurisdiction of the cause of action, because the estate was not fully administered and it could not usurp the powers of the Probate Court in the administration of estates; and the Circuit Court finds as a fact, which finding the Circuit Court of Appeals sustains, that the estate herein was not fully settled and the administrator was not discharged.

Other reasons are apparent why the administrator is not discharged by an order of distribution, independent of the express provision of Section 4532. Under the statutes of Minnesota, the homestead and household property are exempt from the lien of debts of the decedent. Suppose claims should be filed and

allowed against an estate largely in excess of the unexempt property and the creditors should receive ten per cent. only of their claims and afterwards large assets of the estate should be discovered sufficient, and more than sufficient, to pay all claims in full. Under the contention of counsel for petitioner there is no administrator in existence; the after-discovered funds are freed from the trusts imposed upon them for payment of the indebtedness of the estate, and the heirs at law, under an order of distribution, receive all such funds and the creditors take nothing!

It would seem to us that the injustice wrought by the application of such a theory is a demonstration of its absurdity.

III.

There is no conflict between the decisions of the various courts of appeal or between the Circuit Court of Appeals of the Eighth circuit and the Supreme Court of the United States.

No statute like the statute of the State of Minnesota has ever been construed by the Federal Courts, except possibly the statute of Wisconsin, construed in

Hartman vs. Fishbeck, 18 Federal Reporter, 291.

wherein the court held, by reasoning which seems to us unassailable, that the time limited for presentation of claims to the Probate Court did not apply to non-resident creditors, who brought action on their claims in the Federal Court. It is true that the claim at issue in *Hartman vs. Fishbeck* was a foreign contract, and the court did not base its decision upon this fact.

Section 4511 provides that all claims arising upon contract must be presented to the Probate Court within the time limited by the judge of probate, and if not so presented are forever barred, and Section 4514 provides that no action at law for the recovery of money shall be brought in any of the courts of this state against any administrator upon any claim or demand which may be presented to the Probate Court. The statute, in express terms, prohibits suits in the Federal Court. It provides

that all claims not presented to the Probate Court are forever barred. But the presentation of a claim to the Probate Court has the same force and effect as the filing of a complaint in a *nisi prius* court: it gives the court jurisdiction of the subject matter of the claim and of the creditor. By presenting his claim to the Probate Court, the creditor invokes the aid of the state court and is bound by its judgment and decree. The procedure in the Probate Court of a state, if a claim is disputed, to try the issues of fact, is as formal as in the District Court (except that no jury is permitted); "and the allowance or disallowance of any claim shall have the same force and effect as a judgment for or against the estate." Counsel is in error when he says, on page 22 of brief, "the Probate Court in making its order allowing or disallowing makes but a preliminary or *prima facie* finding." This position is refuted by the plain terms of the statute. Such order allowing or disallowing is a judgment of a court of record and is absolute unless reversed on appeal.

How, then, having submitted himself and his cause to the jurisdiction of the state court, can a claimant at the same time maintain his action in the federal court? "A non-resident creditor has the choice of forums," counsel asserts; but we submit that it is a choice between two and not a selection of both. The contention of counsel for petitioner is based upon imaginary rights which the statute does not give and the practice of the court has never sanctioned.

The statutes of Missouri, of Arkansas, of Kansas and of Colorado contain specific provisions that the commencement of a suit in a state or federal court shall be deemed a lawful presentation of a claim to the probate court; but there is no such provision in the statute of Minnesota, nor do the statutes of these states, as do the statutes of Minnesota, provide that the allowance or disallowance of a claim shall become an absolute judgment either for or against the estate.

While it is conceded by counsel that no state legislature can abridge the rights of the federal court conferred by the constitu-

tion and laws of the United States, yet, it is contended that the legislature of a state may prescribe a time within which non-resident creditors must bring their suits in the state court, and that no greater limit will be allowed in the federal court, thus indirectly controlling the jurisdiction of the federal court. It is not questioned that within certain limits this position is correct. The general statute of limitations is controlling on the federal courts sitting within the state. While we insist as a proposition of law that non-resident creditors cannot be barred of their original rights to bring and maintain their suits in the federal courts by the probate statute of the state, enacted for the speedy settlement of estates, such proposition was not necessarily involved in the lower court and is not involved herein.

For the reasons heretofore stated, the provisions of the Minnesota probate law possess none of the characteristics of a statute of limitation. The decisions cited in counsel's brief herein, construing the statutes of Missouri, Arkansas, Nebraska and Rhode Island are in no wise in conflict with the decision of Circuit Court of Appeals herein, for the reason that the limitation of time considered in those cases is the limitation fixed by the *legislature* and is not dependent upon the will or caprice of an individual; is certain and definite as to time—in Missouri, two years; in Arkansas, two years; in Rhode Island, three years; in Kansas, two years. The Circuit Court of Appeals does not hold that these statutes are not statutes of limitation, nor does it hold that the statute of Minnesota is not a statute of limitation binding on the Federal Court, as it might well have done. But it does hold that there must be conceded to the Federal Court the same power as respects the claim of a non-resident creditor as is conferred upon the Probate Court of the state. It is unquestioned and unquestionable that the Probate Court *may* allow eighteen months in which claims may be proven in that court. The Circuit Court of Appeals holds that this same right shall be exercised by the Federal Court sitting in the state of Minnesota. This action was brought long before the expiration of the eight-

eel months and within the time which might have been allowed by the Probate Court.

But a second reason exists why there is no conflict between the decision of the Circuit Court of Appeals and the decisions cited in counsel's brief. As heretofore stated, the claims on which suit was brought in the Circuit Court are negotiable promissory notes made and to be performed without the state of Minnesota and held and owned by a citizen of the state of New York. An examination of the cases cited in the Circuit Court of Appeals and in the Supreme Court of the United States in counsel's brief, will show that all said actions are based on domestic contracts or local causes of action, and in none of said cases was the issue raised, nor could it be raised, that foreign commercial paper was not included within the provisions of the administration laws of the state, except the cases heretofore cited, viz.:

Suydam vs. Broadnax, 14 Peters, 67.

Van Reimsden vs. Kane, 1 Gall. 371; and, possibly,

Borer vs. Chapman, 7 Sup. Ct. Rep. 342, the latter case arising in the state of Minnesota, but the court saying that it was not necessary to determine that issue.

In 172 *U. S.* 358, cited on page 21 of counsel's brief as authority that no greater rights could be granted to a non-resident creditor in the Federal Courts than such creditor could avail himself of in the courts of the state, the Court uses this significant language:

"If the states, whether New York, Arkansas, Minnesota, or others, think that the evils of usury are best prevented by making usurious contracts void and by giving a right to the borrowers to have such contracts unconditionally nullified and cancelled by the courts, such a view of public policy *in respect to contracts made within the state and sought to be enforced therein* is obligatory on the Federal Court, whether acting in equity or at law."

On Page 19 of his brief counsel says: "The proceeding of the Probate Court was *in rem*. The entire estate was in its possession and the final decree was binding on all the world. The court had property in its possession with jurisdiction for the purpose of establishing claims against it and, so far as necessary,

to use it to pay these claims and to adjudge it free from claims at the proper time. The creditor of the deceased had no lien on the property. It had simply the right to establish a claim against that property before the court should finally dispose of it. If it neglected to establish its claim against the fund before the court had adjudged it free from claim of creditors and distributed it, it lost its right forever."

This, it seems to us, is the keynote to all the errors into which counsel has been led by the application of his logic.

The question of the possession of, or lien upon, or jurisdiction over, the property of the estate is in nowise involved in the case at bar. The only question at issue in the Circuit Court is "*debt or no debt.*"

The plaintiff has no specific lien on the assets of the estate and is not seeking to enforce one. It does not seek to remove the estate from the jurisdiction of the Probate Court. We concede, and always have conceded, that the courts of the United States, in the exercise of their jurisdiction over parties, cannot seize or control the property while in the custody of a court of the state, cannot draw to itself the administration of the estate. And nothing of the sort is attempted in the present case. What is sought is a judgment of the Circuit Court decisive of the issue as to whether the plaintiff has or has not a claim unpaid. That judgment we propose to file in the Probate Court of the state as a claim against the estate, allowed by a court of competent jurisdiction, and to be paid in due course of administration of the estate in the Probate Court. If the bulk of the estate has been distributed we cannot follow the specific property into the hands of the distributees, but if there is property in the hands of the administrator, we are entitled to have it applied on such judgment. If there is not sufficient property in the hands of the administrator to satisfy the judgment, then, under the statutes of Minnesota, a creditor's bill, after distribution, will lie against the legatees on their liability to apply the assets of the decedent

to the payment of his debts. Such estates are impressed with the trust for the payment of the debts of the decedent.

Borer vs. Chapman, 7 Sup. Ct. Rep. 348.

It seems to us that the error which runs through the brief of counsel is the assumption that the Federal Court seeks to infringe upon the statutory rights of the Probate Court and to disturb the possession of the property by the state court. But there is no suggestion that the Federal Court herein take possession of the estate and remove it from the custody of the state court, or interfere in any way with the property of the estate. The contention of counsel is that a lien must be established on the property before it passes from the jurisdiction of the Probate Court or all right is lost; but such is not the holding of this court in *Borer vs. Chapman*, cited above.

The Court says on page 348, *Vol. 7, Sup. Ct. Rep.*:

"Such estates are impressed with the trust which such creditor had a right to have administered for his benefit. It is upon the ground of such a trust that jurisdiction of the courts of equity primarily rests in administration suits and in creditor's bills brought against executors or administrators or, after distribution, against legatees, for the purpose of charging them with a liability to apply the assets of the decedent to the payment of his debts. As a part of the ancient and original jurisdiction of courts of equity, it is vested, by the constitution of the United States, and the laws of congress in pursuance thereof, in the Federal Courts, to be administered by Circuit Courts in controversies arising between citizens of different states. It is the familiar and well settled doctrine of this court that this jurisdiction is independent of that conferred by states upon their own courts and cannot be affected by any legislation except that of the United States." Citing many cases, inclusive of *Payne vs. Hook*, 7 Wallace, 425, and saying:

"In *Payne vs. Hook*, the rule was declared in these words: 'We have repeatedly held that the jurisdiction of courts of the United States over controversies between citizens of different states cannot be impaired by laws of the state which prescribe the modes of redress in their courts, or which regulate the distribution of their judicial power. If legal remedies are sometimes modified to suit the changes in the laws of the state and the practice of their courts, it is not so with equitable. The equitable jurisdiction conferred on Federal Courts is the same as the high court of chancery in England possess, is subject to neither

limitation nor restriction by state legislation and is uniform throughout the different states of the Union.' The only qualification in the application of this principle is that courts of the United States in the exercise of their jurisdiction over the parties cannot seize or control property while in the custody of a court of the state."

In *Byers vs. McAuley*, 13 Sup. Ct. Rep. 906,

cited in counsel's brief, after referring to a long line of cases decided in this court, the Court say:

"In *Youley vs. Lavender*, 21 Wall. 276, it was held that where the statute of a state places the whole estate, real and personal, of the decedent within the custody of the Probate Court of a county, a non-resident creditor may get a judgment in the Federal Court against the resident executor or administrator, and come in under the law of the state for such payment as that law marshaling the rights of creditors awards to creditors of his class; but he cannot, because he has obtained a judgment in the Federal Court, issue execution, and take precedence of other creditors who have no right to sue in the Federal Courts; and if he do issue execution, and sell the lands, the sale is void. * * * The recovery of judgment gave no prior lien on the property, but simply fixed the status of the party, and compelled the administrator to recognize it in the payment of debts. * * * Possession of the *res* draws to the court having possession, all controversies concerning the *res*. If original jurisdiction of the administration of the estates of deceased persons were in the Federal Court, it might, by instituting such an administration, and taking possession of the estate through an administrator appointed by it, draw to itself all controversies affecting that estate, irrespective of the citizenship of the respective parties. But it has no original jurisdiction in respect to the administration of a deceased person. It did not, in this case, assume to take possession of the estate in the first instance; and it cannot, by entertaining jurisdiction of a suit against the administrator, draw to itself the full possession of the estate, or the power of determining all claims against or to it. * * *

"A citizen of another state may establish a debt against the estate (*Youley vs. Lavender, Hess vs. Reynolds*); but the debt thus established must take its place and share of the estate as administered by the Probate Court, and it cannot be enforced by process directly against the property of the decedent. In like manner, a distributee, citizen of another state, may establish his right to a share in the estate, and enforce such adjudication against the administrator personally, or his sureties (*Payne vs. Hook*) or against any other parties subject to liability (*Borer*

vs. Chapman), or in any other way which does not disturb the possession of the property by the state court."

132 U. S. 484, *Rio Grande R. Co. vs. Gomila* (*Vinet*);
10 Sup. Ct. Rep. 155.

goes no further than to hold that the administration of the estate cannot be forced out of the Probate Court and into the Federal Court by any proceeding in the Federal Court. The Court say:

"We do not recall any case now where the Federal Courts have not paid respect to the principle that all debts to be paid out of the decedent's estate are to be established in the court to which the law of his domicile has confided the general administration of estates, and that judgments against the deceased, unaccompanied by a seizure of property for their satisfaction, stand in the same position as other claims against his estate, and are paid in like manner. The jurisdiction of chancery to enforce the equitable rights of a non-resident creditor in the case of maladministration or non-administration of the estate of a decedent stands upon a different principle (*Payne vs. Hook*), the rule prevailing as stated in *Hyde vs. Stone*, 20 How. 170, that the jurisdiction of the courts of the United States over controversies between citizens of different states cannot be impaired by the laws of the state which prescribe the modes of redress in their courts or which regulate the distribution of their judicial power."

Bosman vs. Blunt, 147 U. S. 647; 13 Sup. Ct. Rep. 469,

decides only that the construction of the state statute relative to the suspension of the statute of limitation is binding upon the Federal Court. There is nothing in the case applicable to the question at issue.

IV.

We cannot understand by what logic it can be argued that because an action is pending between other litigants in this court, involving the same issue, that therefore, a writ of certiorari should be issued to review in this court a decision which would not otherwise be reviewed. We do not understand why, unless for other reasons, than the pendency of such other suit the Black River National Bank should be required to incur the expense and the delay of a review of its case in this court

because a right of review under writ of error may lie to the receiver of the bank in the Dent case. Nor can we see any reason why every litigant in every cause pending on similar issues anywhere in any of the Circuit Courts of Appeal may not with equal right ask writ of certiorari of this court, if it be a sufficient reason for the issuance of a writ of certiorari in the case at bar, that the case of Dent against the Security Trust Company is here to be reviewed under writ of error.

For the foregoing several reasons, we submit that there is no sufficient fact or condition shown, either in petition or counsel's brief, why the writ of certiorari should issue.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

SECURITY TRUST COMPANY,
As Administrator of the Estate of Sumner W. Matteson, Deceased,
Plaintiff in Error,

vs.

BLACK RIVER NATIONAL BANK OF LOWVILLE,
Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR.

ADDITION TO STATEMENT OF PLAINTIFF IN ERROR.

To the statement made on the first three pages of the brief of plaintiff in error, we desire to add, that the promissory notes upon which action was brought in the circuit court and set forth in full in the printed record herein, were contracts made and to be performed outside of the State of Minnesota, being contracts made in the State of Iowa and to be performed in the State of Iowa; that

probate proceedings were instituted in the State of Iowa shortly after proceedings were instituted in Minnesota; were ancillary to the proceedings in Minnesota; were pending during the time of the proceeding, set forth in the printed record of the probate court herein, and are now pending; that Charles D. Matteson, the secretary of the plaintiff in error is administrator of the estate of said Sumner W. Matteson in Iowa.

The administrator was never discharged by order, judgment or decree of the probate court and there was no record or file in the probate court at the time of the commencement of this action showing that it had complied with the order of distribution.

As to the statement on the fourth page, concerning the opinion of the trial court, we are in doubt as to the correctness thereof, for the reason that the trial court made only a general order for judgment and did not state upon what grounds it awarded judgment in favor of defendant in error.

Defendant in error insisted in the circuit court and also in the circuit court of appeals that, the order of the judge of the probate court has not the force and effect of a statute law.

ARGUMENT.

I.

As we understand the position of plaintiff in error, it is,

First, that the allowance of the account of an administrator and entry of a decree of distribution, *ipso facto*, discharges the administrator, terminates his trust, and suit cannot be thereafter maintained against such administrator;

Second, that, while the federal courts have jurisdiction of the claims against deceased persons, divers citizenship being shown, such jurisdiction must be acquired within the time prescribed by the judge of probate for the presentation of claims in the probate court under the state law;

Third, that such order of the probate court has the full force and effect of a statute of limitations, and that the failure to present claims to the probate court or to bring suit in the federal court within the time limited by the probate court for the filing of claims in said court, bars any action on said claims against the administrator, in the federal court;

Fourth, inferentially, that no action will lie against an administrator in the federal court, unless the claim is first filed in the probate court, appealed to the district court of the state and then removed to the federal court.

Defendant in error contends for the converse of these propositions.

We wish to define clearly the position of defendant in error in prosecuting these actions at law.

We do not contend that the right exists, by virtue of the judgment entered herein, to interfere with the possession of the property belonging to said estate while in possession of the probate court of the state, and we concede that, so long as the property of the estate remains under the jurisdiction and control of the probate court, it is not subject to interference by levy under execution or otherwise, or any process issued out of this court, but that application must be made to the probate court for payment of such judgment. The question is simply "debt or no debt," and that is all the judgment herein adjudicates. If payment is sought, application must be made to the probate court to reach funds under the jurisdiction of the probate court; or, if the property has passed from the jurisdiction of the probate court into the hands of the distributees, then it can be recovered from such distributees only by a proper action in equity and in a manner which will not disturb the possession of the property under the jurisdiction of the probate court.

In other words, the position of defendant in error is that this action is for the purpose of obtaining a judgment payable *de bonis testatoris* for the purpose of arresting the property in the hands of the administrator before it shall be distributed to the heirs at law, and, if sufficient property be not found in the hands of the administrator, that it shall

constitute a foundation for an action in equity, in the event that such action becomes necessary for the payment of the claim of defendant in error.

As we understand the law, it was necessary for defendant in error to exhaust his legal remedy before he could maintain an action in equity against the distributees. (*Walker vs. Brown*, 63 Federal Reporter, 204.) But he was not compelled to postpone the institution of his action at law until all of the personal property had passed from the administrator to such distributees.

At the time of the commencement of the action in the circuit court, so far as the records of the probate court show or it could be ascertained, the administrator was in possession still of all of the personal property belonging to said estate,—an amount far in excess of that required to satisfy the claim of defendant in error,—and had action in equity been brought (if such action would lie while an action at law would be efficacious) the right to resort to said personal property would be waived, for the reason that, if the administrator was, as the records of the court show, in possession of the property, an action would not lie against the distributees who had not received it.

Just what is the contention of plaintiff in error as to the right of action in the federal court, we find it difficult to determine, for, while plaintiff in one paragraph of his brief asserts that he does not

deny the right of defendant in error to sue in the federal courts to establish this claim and does not deny that the method of procedure must be the same as in other actions at law brought in the federal court, the only logical conclusion to be drawn from pages 36, 37, 38 and 39 of brief of plaintiff in error is that the circuit court could acquire no jurisdiction whatsoever. Even on the theory that it concedes that the federal court has jurisdiction, it denies there exists any remedy whatsoever.

Prior to *State ex rel. Matteson vs. Probate Court*, 87 N. W. Rep. 783, the supreme court of the State of Minnesota had held no further than that the effect of a decree of distribution was only the settlement of the administrator's account and the assignment of the property to the heirs. Beyond this the court had not gone. It is true there are some loose expressions in two of the decisions of our supreme court which, as disconnected utterances, might be some basis for the assertions of the plaintiff in error; but, when construed in connection with the issues involved in the case, they will not bear the interpretation sought to be placed upon them.

At common law, the office of the administrator does not terminate during his lifetime, unless he be removed by a court of competent jurisdiction; and, while it is the aim of American legislation to make the office a temporary one, closing

with the accomplishment of the purpose for which it was created, we believe that specific and positive legislation is necessary to clothe the probate court with power to enter a decree discharging an administrator, and this we believe is true whether such probate court is a court created by constitution or by act of legislature. The distribution of the assets of an estate, and divesting the probate court of jurisdiction over the property, is a far different thing from the discharge of an administrator. Until such decree is lawfully entered by the probate court discharging an administrator from further liability and such decree is in pursuance of a statute authorizing the same, the trust continues, in contemplation of law, and the administrator remains clothed with the duties and authorities of his office. *Vol. 2, American Law of Administration*, pages 1255-6-7; sections 251-2-3. A few only of the states of the Union have enacted provisions for the discharge of administrators. It is conceded that there is no such provision in the statutes of Minnesota. California has such provision and, in substance, provides that when the estate has been fully administered and it shall properly appear that the executor shall have paid all sums of money due from him, "the court shall make a decree discharging him from all liability to be incurred thereafter."

In *McCrea vs. Haraszthy*, 51 Cal. 146, the Court say:

"No such decree appears to have been made by the probate court. The mere allowance of the final decree appearing to have been made, obviously, is not the legal equivalent of such decree. Such an account allowed does not even import all the conditions presented by the statute as prerequisite of a decree discharging the executor and terminating hist trust. But if it did, the decree duly entered would still be necessary for that purpose. Until the entry of such a decree, the trust still continues in contemplation of law and the executor remains clothed with the duty and authority of his office. Nor is any decree of distribution shown to have been entered in the probate court. The allowance of the final account of the executor is not a decree of distribution, or the legal equivalent of such a decree, and this for the reason already mentioned in reference to a decree in terms discharging the executor from his trust."

See, also,

Dohs vs. Dohs, 60 Cal., 255.

On page 1256, American Law of Administration, after saying that some probate courts have entered orders discharging administrators or executors in the absence of a statute authorizing such order, the author continues:

"However consistent such ruling may be with the spirit of the system of administration, it is not quite clear that either a final settlement after a discharge by the Court or an order of discharge not authorized by statute can relieve an executor or administrator of the duty imposed upon him by law of collecting assets discovered after final settlement and administering them by payment to creditors, legatees or distributees, or protect him against liability for assets concealed by him and not accounted for in his inventory or settlement, until a decree is entered by the probate court dis-

charging him from further liability, in pursuance of a statute authorizing such decree, the trust continues in contemplation of law, and he remains clothed with the duties and authority of his office."

It is conceded that no order, judgment or decree was ever entered in the probate court discharging the defendant as administrator of the estate of Matteson, further than the order of distribution and the settlement of the administrator's account.

In

Sitzman et al. vs. Pacquette et al., 13 Wisconsin 325,

it appears that letters of administration were issued to H. L. Dousman and Joseph Pacquette in the estate of Pierre Pacquette, deceased; that thereafter such administrators filed petition in the probate court in Wisconsin stating that they had duly administered upon said estate, had settled and adjusted the personal estate belonging to the deceased, and had distributed the moneys arising therefrom among the creditors, praying that their accounts might be settled and that they be discharged from their trust as administrators. An order of the court was entered, in which it was decreed that, in accordance with their petition, their accounts be accepted and they be discharged from any further liability or responsibility on account of said estate. This order was entered May 17, 1841. In 1845 Alfred Bronson presented a petition to said probate court stating that, at the request of Dousman, agent of the principal creditor of said estate,

he prayed the court to grant unto him, the said Bronson, letters of administration *de bonis non* of said estate. The petition was granted. Letters of administration *de bonis non* were granted to said Bronson. Thereafter Bronson applied to the Court to sell real estate of which the said Pierre Pacquette died siezed and the sale was made, and thereafter action to recover the land was instituted by the children and heirs at law of Pierre Pacquette, on the ground of invalidity of said sale. There was no provision in the statute of Wisconsin for a decree discharging the administrator, nor was there any provision for the resignation of an administrator, except for certain causes, which causes were not the basis for the discharge of these administrators. While it is true that the decision in this case was rendered upon the ground that no authority existed either in law or by virtue of the facts for the appointment of the administrator *de bonis non*, yet the entire decision is based upon the theory that an administrator once appointed remained in the exercise of his trust unless discharged by the decree of the probate court appointing him, under authority of the statue providing for the entry of such decree. The administrator was discharged by order of the court, yet the court held the decree void, and the sale made by the administrator *de bonis non* of no effect.

The gist of the decision is contained on page 340, in the following words:

"No rule is better settled than that these courts derive their powers from the statute, and can exercise none except those which the statute gives, and that, so far as acquiring jurisdiction over the subject-matter is concerned, the statute must be strictly complied with. In the language of the Court of Appeals, *Simpel vs. Waffel*, 16 N. Y. 185, 'these principles are elementary, and no citation of authority to sustain them is necessary.'"

While the probate court may have divested itself of its jurisdiction over the property of the estate by the entry of the decree of distribution, yet, from the statement of facts in the case at bar, it was plainly the view of the probate court of Ramsey County, and also of the administrator, that the administrator was not discharged by the settlement of his account and the decree of distribution, for, after the entry thereof, a claim against the estate was allowed by the administrator and was paid, and long subsequent to the entry of such order, property was discovered which was not included in the inventory of the estate, or in the so-called decree of distribution, and a petition was made to the Court to include such property. The petition was entertained and the Court made its order amending its decree of distribution in order that the description of the after-discovered property might be inserted therein. Both the Court and the administrator, therefore, continued in the exercise of a jurisdiction over this estate until very near to the time of the commencement of this action, and thereafter, the administrator assigned stocks and bonds, as such administrator.

There is not a record of the court to show that the order of the court in the final distribution of the estate was ever complied with on behalf of the administrator, and, we submit that the action of both court and administrator shows that neither interpreted, or for a moment thought, that the final decree, so-called, terminated the trust imposed upon such administrator.

Schmidt vs. Stark, 61 Minnesota 91, is cited by counsel as holding that the administrator is discharged by virtue of the entry of a decree of distribution. The gist of that decision is, "if *such action* is necessary resort must be had to some other forum, for the probate court has no further jurisdiction." The Court does not here refer to jurisdiction of the person of the administrator, but jurisdiction over the property, as is clearly indicated in the first portion of the decision.

An order of distribution in nowise terminates the life of the administrator, for, under section 4532, there may be several distributions. 4532 is as follows:

"Further Orders of Distribution, When.—If the whole of the debts and legacies are not paid by the first distribution and if the whole assets have not been distributed, or if other assets afterwards come to the hands of the executor or administrator, the probate court may from time to time make further orders for the distribution of assets."

The Court, in the case last above cited, say: "If an *action* is necessary"—but no action can be com-

menced or maintained in the probate court; proceedings may be instituted to call an administrator to account for disobedience to the order of the Court; but this is in no sense an action. The entry of an order of distribution does not terminate the jurisdiction of the probate court over the administrator, but there vests continuously in the probate court power to discipline its officers and those within its jurisdiction for refusal to obey its proper orders and its lawful decrees.

The vice of plaintiff's position is that it assumes that because an *action* will lie in the district court, that therefore the administrator is absolved from all obligation to the probate court. The supreme court of this state has never said, except in 87 *N. W. Rep.* above cited, that the probate court is without authority to compel obedience to its orders and its decrees or to impose a penalty for refusal to comply with such orders and decrees. In the case cited, the supreme court held that the district court did not have jurisdiction of the cause of action, because the estate was not fully administered and it would not usurp the powers of the probate court in the administration of estates; and in the case at bar the circuit court finds as a fact, which finding the circuit court of appeals sustains, that the estate herein was not fully settled and the administrator was not discharged. Other reasons are apparent why the administrator is not discharged by an order of distribution, independent of the express provision of section 4532. Under the statutes of

Minnesota the homestead and household property are exempt from the liens of debts of the decedent. Suppose claims should be filed and allowed against the estate largely in excess of the exempt property and the creditors should receive ten per cent. only of their claims, and afterwards large assets of the estate should be discovered, sufficient, and more than sufficient, to pay all claims in full! Under the contention of counsel for plaintiff in error, there is no administrator in existence; the after-discovered funds are freed from the trusts imposed upon them for the payment of the indebtedness of the estate, and the heirs at law, under an order of distribution, receive all such funds and the creditors receive nothing. It would seem to us that the injustice wrought by the application of such a theory is a demonstration of its unsoundness.

Davis vs. Wood, 7 Fed. Cases (No. 3658)—a Connecticut case. The Court say:

"It may be urged that the administrator, having settled his administrator's account and having distributed the estate, is *functus officio*, and that it is necessary to apply to the probate court for the appointment of a new administrator. Distribution, as has been said, does not necessarily exhaust the administrator's powers. If he is living, he is still the representative of the estate, and if he is competent and willing to act there is no necessity for a new appointment. He has not ceased to be administrator from the fact that his account has been approved and that the estate which was in his hands at the time of the settlement of the accounts has been distributed. If new assets should be discovered, the title would vest in him, and he would be the person to reduce such estate to possession. If

it should be ascertained that a debt theretofore undiscovered was due the estate he is authorized as administrator to commence suit for its recovery."

Under the laws of Iowa, the administrator was discharged. In Connecticut, as in Minnesota, there is no statute authorizing such discharge.

The attention of the Court is called to the fact that in none of the cases cited on pages 14 and 15 of appellant's brief has the supreme court of the State of Minnesota held that the administrator of an estate was discharged by the entry of the decree of distribution, called by appellant the "final decree."

State vs. Probate Court of Sibley Co., 33 Minn. 95, was an application to the district court for a writ of prohibition to the probate court, the probate court having granted a petition to set aside a sale of real estate confirmed by the probate court more than twenty years *after the discharge of the administrator.* The Court held that the land had passed by sale and confirmation out of the jurisdiction of the probate court, saying:

"The question is not one of administration, but of adverse claim to the property, a question which must be determined by some other tribunal than the probate court," and specifically states that the administrator had been discharged.

In *State vs. Probate Court of Ramsey Co.*, 40 Minn. 296, the administrator had been discharged by formal order. Twenty years after the discharge, a petition for the appointment of an administrator *de bonis non* was filed, granted, administrator ap-

pointed and license granted to sell the real property for the payment of claims, the allowance of which, the Supreme Court said, operated as a judgment. All that was at issue and all that the Court held was that the application for license to sell came too late; that the effect of the final decree and discharge of administrator discharged the real estate from the lien of the creditors.

Stackhouse vs. Berryhill 47 Minn. 22.

In this case the question at issue was whether a will could be admitted to probate several years after the administrator had been discharged. The Court admitted the will to probate, saying:

"The effect that the filing and allowance of certified copy (of the will) may have upon the real property situated in the state * * * will remain the subject of future examination."

In *McNamara vs. Casserly*, 61 Minn. 343, the Supreme Court held that the entry of a second decree would annul the decree first entered, substantially overruling that portion of the decision in 47 Minn., page 22.

Schmidt vs. Stark, 61 Minn.,

was an action to recover one-fifth of the property of the estate, on the ground that the probate court had entered a decree awarding to plaintiff an undivided one-fifth of the estate, leaving the remainder of the estate unassigned. The Court dismissed the action on the ground that it could not award plaintiff the possession of the undivided one-fifth of the estate while the estate was in the possession

of the probate court, incidentally saying that, if an *action* should be necessary after the distribution of the estate, such action must be brought in some other forum for the probate court could not have jurisdiction.

In *Ganser vs. Ganser*, 86 N. W. Rep. 18, the language quoted in appellants' brief is from a statement of the facts of the case and not the law applicable to the case, and is in no sense a decision to the effect claimed by appellant, since the only question at issue was, "When does the statute of limitation commence to run on an administrator's bond: at the time of the entry of decree of distribution and when suit might be commenced in the district court, or from the date when leave to sue was granted by the Court?

With reference to the discharge of an administrator by formal order or decree, the supreme court of Minnesota holds (58 Minnesota, 29, *In re Charles Scheffers' Estate*):

"But there must be *some* order or decree which contains the substance of the matter, which shows that the attention of the court was directed to it and that it intended the result claimed. *That must appear with certainty beyond mere conjecture.*"

But the circuit court and circuit court of appeals both found and held that the order of distribution was *not* intended by the probate court to be a discharge of the administrator. Can it, therefore, be reasonably claimed that it "appears with certainty"?

The last case cited on page 15 of appellants'

brief, viz.: *State ex rel. Matteson vs. Probate Court of Ramsey County*, 87 N. W. Rep. 783, does hold that upon the entry of final decree of distribution assigning the whole of the estate, the property is removed from the jurisdiction of the court and the office of administrator is rendered *functus officio.*

Relative to this case we have to say that a *feigned issue was presented to the court for the purpose of forestalling the decision of this court.* The petition was presented to the probate court of Ramsey county after the case at bar was removed from the circuit court of appeals to this court. The relator therein bore no friendly relations to the defendant-in-error herein and sustained most cordial and brotherly relations to the secretary and treasurer of the plaintiff-in-error herein,—Charles D. Matteson, his brother, and who had the whole management of the Matteson estate (see printed record on page 30.)

The position was no different than it would have been had Charles D. Matteson made the petition to the probate court for an accounting which he himself must file as such secretary. Defendant-in-error herein was kept in ignorance of the pendency of said proceedings in both probate and district and supreme courts, and offered no opportunity in any of said courts of intervening or presenting any brief or argument in behalf of said defendant-in-error. Said cause was never on the calendar of any General Term of the District Court,

was entered on the October calendar, A. D. 1901, of the Supreme Court of the State of Minnesota, being No. 180 under title of "*State of Minnesota ex rel. M. Matthews, Relator-Appellant, vs. The Probate Court of Ramsey County.*" Counsel for plaintiff-in-error herein was counsel in said cause for the respondent, the Probate Court of Ramsey County. *Both appellant* and *respondent* in said case were seeking and desirous of obtaining a decree of the Supreme Court of the State of Minnesota of the nature of the decision rendered in said cause for the purpose of forestalling the decision of this court. The issue was feigned and the cause an imposition upon the Supreme Court of the State of Minnesota and obtained under conditions that entitle it to little weight in this court. The writ of *mandamus* was issued to the probate court September 5th, heard by the district court on September 7th; judgment entered on the same day and appeal taken to the Supreme Court of the State on the 11th of September. The Supreme Court convened October 1st and the case was argued October 15th, decision rendered November 1st; all in the year 1901.

The federal courts obtained jurisdiction of the case at bar and all of the issues therein involved, January, 1897, and it seems to us that the language of the Circuit Court of Appeals of the Eighth Circuit, in

Starr et al. vs. Chicago, R. I. & P. R. R. Co. et al., 110 Fed. Rep. 3.

on page 8, is applicable to said case.

"In other words, the effect of these later actions is to toll off to another court the question which has long been and still is properly in litigation here. * * * and forestall and nullify any decision and decree of this court regarding issues of which it first lawfully took jurisdiction. The impropriety and inadmissibility of such a proceeding, in the light of the fundamental rules of our judicial systems, to which we have now adverted, is so manifest that we have no doubt that the learned attorney general, when his attention is once directed to them, will at once perceive the propriety and necessity of suspending all action in other courts involving the unconstitutionality of this law, and the right and duty of this railroad company to reduce its charges to those there prescribed, until this court, which first acquired jurisdiction of the issues and the parties, has finally determined the questions presented. * * * The enforcement of this rule, that the court which first takes jurisdiction must retain and exercise it to the exclusion of all proceedings in other courts until its jurisdiction is exhausted by the final judgment or decree, and by its effective execution, is indispensable to prevent unseemly conflicts between courts and their officers, and "confusion worse confounded."

It is true that the issue between the state court and the federal court in the case last above cited is not at all identical with the proceeding here and the case is not at all identical with the cases at bar and *State ex rel. Matteson vs. Probate Court of Ramsey County;* but the same principle is involved in both and we submit that the decision of the Supreme Court of Minnesota in *State ex rel. Matteson vs. Probate Court of Ramsey County* should receive little, if any, weight by this court in the consideration of this case.

II.

The defense interposed to the action by plaintiff in error is in effect *plene administravit*. Is this any defense to an action to determine the validity of the claim of these creditors against this estate in this court? This action is brought for the purpose of determining only the validity of the claim of these creditors. In *Corington vs. Burns' Administrators*, 1 Dillon, 16, Judge Dillon says:

"This is an ordinary action against the administrator upon the contract of endorsement made by his intestate. The plaintiff seeks simply to judicially establish his claim against the estate. The statute of Missouri in terms declared that any person having a demand against the estate may establish the same by the judgment or decree of some court of record. (Gen. Stat. 1865, 502, et seq.) The right of the plaintiff to bring this action is clear and undisputed. *Payne vs. Hook*, 7 Wall. 425.) Each of the pleas demurred to is, in fact and substance, a common law plea of *plene administravit*, viz.: that the defendant has now no assets, but had, before the commencement of this action, fully administered the same. The demurrer raises the question whether, under the laws of the state of Missouri, the plea of *plene administravit* is a defense, or presents an issue which it is proper to try in an action of this character, to-wit: an action merely to establish the validity and amount of the debt against the estate.

"The modes of the administration of the estates of deceased persons in England and in most of the American states are in many respects very different. In England, if an administrator suffered a judgment to go against him by default, or failed to plead that he had fully administered, such a judgment was held to be a conclusive admission by the administrator that he had assets sufficient to pay it, and in effect bound the administrator

personally, and amounted to an appropriation of such assets to the payment of the judgment. Hence the reason and also the necessity for such a plea.

"Not so, however, here. Whether the administrator does or does not defend, he is not bound personally, and there is no judgment *de bonis propriis*, and no execution against either the goods of the administrator or of the decedent. The judgment simply establishes the debt and orders it to be paid by the administrator in due course of administration. *Armstrong vs. Cooper*, 11 Ill. 560; *Laughlin vs. McDonald*, 1 Mo. 684. Under the laws of Missouri, the administrator is liable only to the extent of the assets received, and for waste and mismanagement. The statute classifies the debts against the estate, and directs the mode and order of payment by the administrator. A judgment such as the plaintiff seeks is no evidence that the administrator had assets or that he has been guilty of any default; and any inquiry of that kind in an action such as the present is entirely collateral, and it does seem to us manifestly improper.

"For the reasons above given, the courts in other states have held, under statutes like that of Missouri, that a plea of *plene administravit* is not a good plea. *Allen & Wf. vs. Bishop's Executors*, 25 Wendell, 414; *Baker's Executors vs. Gainor's Executors*, 17 Wend. 559; *Butler vs. Hempstead's Administrators*, 18 Wend. 666; *Judy vs. Kelley*, 11 Ill. 211.

"In deciding, in the case last cited, that a plea of *plene administravit* is no answer to an action brought against an administrator, upon a debt due by his intestate, Treat, C. J., remarks that such a plea "presents no defense. At common law the failure of an administrator to plead want of assets, or that he had fully administered, operated as an admission on his part that he had assets sufficient to satisfy the demand; and he was afterwards estopped from asserting that he had no as-

sets, or that he had fully administered. Hence the necessity of this class of pleas. The case is different under our statute. * * * A judgment against an administrator only establishes the debt against the estate, to be paid in due course of administration. The creditor is not entitled to execution on his judgment, either against the administrator or the property of the intestate. *Welch vs. Wallace*, 3 Gilm. 490. This change in common law dispenses with the plea of *plene administravit*, and renders it wholly unnecessary. It is in fact no defense to an action against an administrator.

The same reasons obtain in this state. Whether the administrator has or has not assets, has or has not been guilty of waste or mismanagement, are questions which may be hereafter tried, if the plaintiff establishes his debt; but it is premature to try them now and improper to introduce such extraneous issues into this suit."

In *Allen vs. Bishop's Executors*, 25 Wendell, 414, Judge Nelson says:

"There are some sections in the revised statutes which it is impossible to reconcile with the general system prescribed in respect to the settlement of estates of deceased persons. The system itself does not seem to have been fully comprehended by its authors. A pro rata distribution among the creditors of a class in case of deficit in assets is a fundamental principle for the enforcement of which abundant provision has been made. The whole fund is brought under the control of the surrogate, and not a dollar can be touched without his assent. Executors and administrators are but trustees to settle the estate under his direction and control, agreeably to the principles of the statute. Nothing is gained by obtaining a judgment against them beyond liquidation of the debt. The creditor gets no cost except at the discretion of the court, and only his pro rata share of the judgment. The result is the same whether the suit be defended or

not. 18 Wendell, 666; 12 Wendell, 542; 17 Wendell, 559.

"The plea of *plene administravit*, therefore, seems altogether inappropriate and useless. It has already been held in the case last cited above that the plea of *plene administravit praeter* is no longer a bar."

That the estate is not absolutely defunct and that it continues in legal effect to exist for certain purposes, and if so existing the office of administrator also exists, is held in

Matteson vs. Dent, 20 Sup. Ct. Rep., 419.

III.

Plaintiff in error contends that because the action herein was not commenced within the time limited by the probate court for the presentation of claims in that court, that the action is barred by limitation; that the limitation of time within which a claim must be presented to the probate court is a general statute of limitations binding alike upon the state and federal courts.

No statute like that of the State of Minnesota has ever been construed by the federal court, except, possibly, the statute of Wisconsin construed in *Hartman vs. Fishbeck*, 18 Fed. Rep. 29. Section 4511 provides that all claims arising upon contract must be presented to the probate court within the time limited by the judge of probate, and if not so presented are forever barred. Section 4514 pro-

vides that no action at law for the recovery of money shall be brought in any of the courts of the state against any administrator, upon any claim or demand which may be presented to the probate court. The statute, in express terms, prohibits suits in the federal courts. It provides that all claims not presented to the probate court *are forever barred.* The presentation of a claim to the probate court has the same force and effect as the filing of a complaint in a *nisi prius* court. It gives the court jurisdiction of the subject matter of the claim and of the creditor. By presenting his claim to the probate court, the creditor invokes the aid of said court and is bound by its judgment and decree. The procedure in probate court, if a claim is disputed, to try the issue of fact is as formal as in the district court, except that no jury is permitted, and the "allowance or disallowance of any claim shall have the same force and effect as a judgment for or against the estate."

Counsel is in error when he says, on page 33 of his brief, that the presentation of a claim to the probate court for allowance cannot be said to be a suit of a civil nature at common law or in equity; that it does not meet one of the requirements of such suit; that there is no suit until the appeal; that the appeal is the commencement of the suit; that it is only a judicial determination of issues between parties after examination before a court in a proceeding in which the parties have the right to call witnesses and introduce evidence and to be

heard, which it is not competent for the state to confine to its own courts.

Unless counsel means by this that the probate court has exclusive jurisdiction to the exclusion of the federal court, we are unable to fathom his meaning. The practice in the probate courts of this state is well known to counsel. From his long and successful litigation in those courts, counsel will not deny that in every respect, save that of a jury, claims in the probate court are tried as in the district court; parties are heard, witnesses sworn and testify in all respects as in equity cases in the district court.

Counsel's argument before the circuit court of appeals is sounder than his present one. On pages 27 and 28 of his brief before the circuit court of appeals, he says:

"There can be no question that the filing of a claim is the institution of a suit. The statute provides for the hearing (Sec. 4507), taking of evidence and allowance not only of matters of defense but of offsets to the claim (Secs. 4511, 4512), for an order allowing or disallowing the claim (Sec. 4517) which shall have the same force and effect as a judgment for or against the estate (Sec. 4509). Whether it is a suit at law or not, cannot be made to depend upon the name the statute gives to the tribunal nor upon the title used to designate the proceedings. It is a controversy of which the federal courts may have jurisdiction."

On pages 34 and 35 of his brief, counsel likens the procedure in the probate court to a receivership of an insolvent's estate and argues that because a creditor of such insolvent would have no

right to prove his claim by suing the receiver in the federal court, so a creditor of the estate of a deceased person would have no right to sue in any court, and particularly in the federal court, to establish his claim and file the judgment therefor in the probate court. If this is not a denial of the jurisdiction of the federal court, we are unable to understand counsel's meaning.

In answer to such proposition we simply cite the following cases:

Suydam v. Broadnax, 14 Pet. 67, 74, 10 L. Ed. 357;

President, etc., vs. Vaiden, 18 How. 503, 507, 15 L. Ed. 472;

Borer v. Chapman, 119 U. S. 587, 589, 7 Sup. Ct. 342;

Lawrence v. Nelson, 143 U. S. 215, 224, 12 Sup. Ct. 440, 36 L. Ed. 130;

Payne v. Hook, 7 Wall. 425, 430, 19 L. Ed. 260;

Arrowsmith v. Gleason, 129 U. S. 640, 667, 4 Sup. Ct. 237, 32 L. Ed. 630;

Johnson v. Waters, 111 U. S. 557, 570, 13 Sup. Ct. 906, 37 L. Ed. 967;

Hyde v. Stone, 20 How. 170, 175, 15 L. Ed. 874;

Hess v. Reynolds, 113 U. S. 73, 76, 5 Sup. Ct. 377, 28 L. Ed. 927;

Byers vs. McAuley, 13 Sup. Ct. Rep. 906.

As to right of suit in State Court, see *Oswald vs. Pillsbury*, 61 Minn. 520.

But counsel say "if the federal court had jurisdiction then suit must be brought within the time limited by order of the probate court."

Sec. 4509 (printed on page 9 of plaintiff's brief) does not contain a single characteristic of a statute of limitations. It is flexible in its terms, leaving to the probate court to say within what time claims must be presented or be barred in that court, making it discretionary with the court whether the bar may be removed or not and making the limitation depend on conditions and the will of the court, whether it shall be six, twelve or eighteen months.

The legislature has made but one limitation that is definite and concise in its terms, namely: one year and six months from the time when notice of the order is given for the presentation of claims to the probate court. All other limitations are left to the discretion of him who happens to occupy the office of judge of probate. The Supreme Court of Minnesota has said that this section is not to be construed literally, see

Hantzch vs. Massolt, 61 Minn. 366.

The decisions cited in counsel's brief construe the statutes of Missouri, of Arkansas, Nebraska and Rhode Island, which are entirely different from the statute of the State of Minnesota, for the reason that the limitation of time construed in the former is a limitation fixed by act of legislature and is not dependent upon the will or caprice of an individual; is certain and definite and is not flexible, changeable, uncertain and indefinite,—in Missouri,

two years; in Arkansas, two years; in Rhode Island, three years; in Kansas, two years.

On page 28 of brief, counsel say:

"The state has no power over the federal courts, neither to confer nor to take away jurisdiction."

But the claim that a probate judge has the right to say when an action may and may not be barred in the federal court is a usurpation of the power which counsel concedes the state does not possess. The position of counsel, in effect, is that the jurisdiction of the courts of the United States depend on the will and caprice of a judge of probate of any county of the State of Minnesota; that such judge may say to a foreign creditor, "you may bring your action in the United States court if you will, but I will prescribe the time within which you bring it, and the courts of the United States must be submissive to my will." There is no case to be found among the decisions of the federal courts, either Circuit Court, Court of Appeals or Supreme Court of the United States, which has held that such a limitation of time, not by act of legislature but by order of the judge of a lower court, for the convenience of that court, has the force and effect of a statute of limitation upon the courts of the United States.

We do not raise the question (for it is not in the case at bar) that a statute absolute in its terms that domestic contracts must be presented within eighteen months or be barred, is a statute of limitations which must be observed by this court. But

Sec. 4509 makes no limitation by act of legislature, and delegates to an individual to say what shall be a limitation on the presentation of claims. It substitutes for the will of the legislature, the caprice of an individual, and we submit that if the power vests in the legislature to delegate authority to an individual to prescribe six months period for the presentation of claims, domestic or foreign, it may well exercise the same power to limit the presentation of claims to six weeks, and, indeed, since the commencement of this action, said section 4509 has been amended by the legislature of this state by the adoption of the following proviso, viz.:

"Provided, that the judge of probate on proper proof of the affidavit of the executor or administrator that there are no debts against the estate, may limit the time in which creditors may present their claims, to three months."

We think it will not be contended that such a limitation even under the conditions named (that the administrator should present affidavit to the court of no claims existing) would apply to commercial paper running the ordinary time of three, six or nine months, made and to be performed in the city of New York, and that the holder of such paper would be excluded from participation in the distribution of an estate in Minnesota, if his claim was not filed within three months. It would be a most dangerous doctrine, the application of which would in many instances be absolute denial of justice.

As to the binding effect on the federal courts of

the statutes of this character, the best considered cases hold that such statutes have no force or effect on the federal courts, *especially in contracts made and to be performed without the state.*

In

Suydam vs. Broadnax, 14 Peters, 67,

the Court quotes, on page 73, the statutes of Alabama, and says:

"The sixth section declares that 'all claims against the estates of deceased persons shall be presented to the executor or administrator within eighteen months after the same shall have accrued, or within eighteen months after letters have been granted, and not after; and all claims not presented within that time shall be forever barred from recovery,' but excepts, among other exceptions, debts contracted out of Alabama.

"This is a statement which, by the exemption it gives to creditors and administrators from suit, would seem to imply denial to creditors of the intestate the right to sue, without respect to the foreign country or state, in our Union, where the debt was contracted. It is a general statute, without a direct application to contracts made out of Alabama; and its construction cannot be extended to such contracts. A sovereign state, and one of the states of the Union, if the latter were not restrained by constitutional prohibitions, might, by virtue of sovereignty, act upon the contracts of its citizens, wherever made, and discharge them, by denying a right of action upon them in its courts. But the validity of such contracts as were made out of the sovereignty or state, would exist and continue everywhere else, according to the *lex loci contractus*. This shows the reason for and force of the rule just given; and it may be laid down as a safe proposition that a statute discharging contracts or denying suits upon them, without *particular mention of foreign contracts, does not include them.*"

The Court further says that its decision may be put upon other grounds making the conclusion equally certain.

"They are such as are connected with the constitutional and legal rights of plaintiffs to sue in the Circuit Courts of the United States; and upon the law which under our system does not permit an act of insolvency, completely executed under the authority of one state, to be a good bar against the recovery upon a contract made in another state.

"The eleventh section of the act to establish the judicial courts of the United States, carries out the constitutional right of a citizen of one state to sue a citizen of another state in the Circuit Court of the United States; and gives to the Circuit Court 'original cognizance, concurrent with the courts of other states, of all suits of a civil nature, at common law, and in equity.' It was certainly intended to give to suitors having a right to sue in the Circuit Court, remedies co-extensive with these rights. These remedies would not be so, if any proceedings under an act of a state legislature, to which a plaintiff was not a party, exempting a person of such state from suit, could be pleaded to abate a suit in the Circuit Court. * * * It must be remarked, however, that the statute of Alabama is one for the distribution of insolvent estates, not liable to the objections of a general law; and is only brought under cases mentioned, by an attempt to extend its provisions to a citizen of another state. In *Sturgis vs. Crowninshield*, it is said, 'every bankrupt or insolvent system in the world must partake of the character of a judicial investigation. Parties whose rights are affected are entitled to a hearing. Hence, any bankrupt or insolvent system professes to summon the creditors before some tribunal, to show cause against granting a discharge to the bankrupt. But on what principle can a citizen of another state be forced into the courts of a state for this investigation? The judgment to be passed, is to prostrate his rights; and on the subject of

these rights, the constitution exempts him from the jurisdiction of the state tribunals, without regard to the place where the contract may originate.' In *Ogden vs. Saunders:* 'A bankrupt or insolvent law of any state, which discharges both the person of the debtor and his future acquisitions of property, is not a law impairing the obligations of contracts, so far as respects debts contracted subsequently to the passage of the law. But a certificate of discharge cannot be pleaded in bar of an action brought by a citizen of another state, in the courts of the United States, or of any other state than where the discharge was obtained.'

"Though this is a statute intended to act upon the distribution of insolvent estates, and not a statute of bankruptcy, whatever exemption it may give from suit to an executor or administrator of an insolvent estate against the citizens of Alabama, a citizen of another state, being a creditor of the testator of intestate, cannot be acted upon by any proceedings under the statute, unless he shall have voluntarily made himself a party in them, so as to impair his constitutional and legal right to sue an executor or administrator in the Circuit Court of the United States."

In *Hartman vs. Fishbeck, Admr.*, 18 Fed. 291, the same defense was interposed as in the case at bar. A demurrer was interposed to the answer, namely: that the time limited within which claims of creditors could be presented had expired; that the plaintiff knew of the death of the intestate, but did not present his claim for allowance within the prescribed time, and that he was barred from maintaining the action. The Court says:

"The question to be determined is, Do the facts therein stated constitute any defense to this action? I am clearly of the opinion that they do not, and that the demurrer should be sustained. Un-

doubtedly, in the absence of the statute referred to, the usual common-law rule would be open to the plaintiff and could be enforced against the administrator. To maintain the defendant's contention, it must, therefore, be made to appear that the state statute operates as an abrogation of that remedy, even in the case of a citizen of another state suing in this Court. Such effect cannot be given to the statute. The special course of procedure prescribed by the statute is, of course, effective to bind all citizens of the state, and operates to protect the administrator or executor against suit by such persons. It is also probably true that if a citizen of another state, in a case like this, invokes the aid of the state court in the enforcement of a remedy, he will be remitted to the court having special and exclusive jurisdiction of the subject-matter, and be held subject to the provisions of the statute referred to. *Bank vs. Slater*, 21 Minn. 174. But it is the constitutional right of a citizen of another state, where his demand is adequate in amount, and other prerequisites to jurisdiction exist, to sue in this Court, and that right cannot be affected by the state statutes. In other words, the law of a state limiting the remedies of its own citizens in its own courts cannot be applied to prevent the citizens of other states from suing, in the courts of the United States in that state, for the recovery of any money or property there, to which they may be legally or equitably entitled. *Union Bank of Tenn. vs. Jolly's Admr.*, 18 Howard, 503.

"It is to be observed that the only question here is as to the right of plaintiff to bring this suit, and to prosecute it to judgment in this court; and there is not involved any question of the ultimate course of procedure essential to enforcement of the judgment against the estate, if a judgment shall be recovered. The statute is one which, by the exemption it gives to executors and administrators from suit, would seem to imply a denial to creditors of the intestate of the right to sue without regard to the state of which the creditor may be

a citizen, or where the debt was contracted. *Suydam vs. Broadnax*, 14 Peters, 67.

"But the judiciary act of the United States provides that the Circuit Court shall have original jurisdiction of all suits of a civil nature, at common law or in equity, where the matter in dispute, exclusive of costs, exceeds the sum or value of five hundred dollars, and the suit is between a citizen of the state where it is brought and a citizen of another state; and, as was said by the Court in the case last cited, it was certainly intended by this statute, 'to give to suitors having a right to sue in the Circuit Court, remedies co-extensive with these rights. These remedies would not be so, if any proceedings under an act of a state legislature, to which a plaintiff was not a party, exempting a person of such state from suit, could be pleaded to abate a suit in the circuit court.

"The proposition of counsel is correct, that, in the absence of legislation upon the subject by congress, the courts of the United States recognize the statutes of limitation of the several states and give them the same construction and effect as are given them by local tribunals. * * * But it can hardly be contended, I think, that the statute in question creates a limitation to which the rule or principle invoked is applicable. It is not like the general statute of limitations of the state, which, in cases of contract, limits the time of the commencement of an action to six years. Here the statute prescribes a certain course of procedure in connection with the settlement of estates, to be pursued by creditors in the enforcement of their claims. It provides a certain remedy, which is made exclusive in the state. The limitation of time within which, by statute, claims must be presented for allowance in the probate court, is inseparable from the peculiar procedure prescribed. It is part of that procedure, and so not like a general statute of limitations; and as the plaintiff here was not bound to pursue that remedy, but, being a citizen of another state, can sue in the fed-

eral court, he is not affected by a limitation which cannot be separated from the statutory mode of procedure. * * * Citing from *Ry. Co. vs. Whitton*, 13 Wallace, 285, the following language: 'In all cases where a general right is thus conferred, it can be enforced in any federal court having jurisdiction of the parties. It cannot be withdrawn from the cognizance of such federal court by any provision of state legislation that it shall only be enforced in the state court;' " quoting also from *Suydam vs. Broadnax*, *Bank vs. Jolly's Admr.*, and *Payne vs. Hook*, and saying, "Hence, the Circuit Court for any district embracing a particular state will have jurisdiction of an equity proceeding against an administrator, notwithstanding that, by a peculiar structure of the state probate system, such a proceeding could not be maintained in any court of the state."

Referring to and commenting upon *Union Bank of Tenn. vs. Jolly's Administrators*, Mr. Justice Brewer in 27 Fed. 408 says:

"By the laws of the State of Mississippi, when an administrator takes possession of an estate, if he thinks it is insolvent, he may apply to a court, obtain an order, and have notice of insolvency published, and then those creditors that come in and present their claims in this insolvent proceeding share in the assets. *If they do not come in, they do not share.* An administrator taking possession of an estate believed it insolvent, and took the regular proceedings, but when he closed out the estate he had a surplus of six or seven thousand dollars. This claimant had not presented his claim in those proceedings. Now, under the law of Mississippi, the surplus went to the heirs; but the supreme court sustained a bill in favor of this claimant as against the administrator to the extent of the fund in his hands. Well, it is familiar law that a court of equity will follow the assets of an ancestor in the possession of the heir, and apply them to the

payment of the debts of the ancestor. There may be exceptions, but that is the general rule. Now, instead of waiting for the administrator to turn the property over to the heirs, and leaving the claimant to then proceed against them, the court simply intercepted the fund in the possession of the administrator, and awarded it to the claimant creditor."

Excepting only so far as the alleged insolvency of the estate in Mississippi was concerned, we can see no difference in fact or in principle between that case and the case at bar, save only such difference, if there be a difference, as is made by the decision of the Supreme Court of Minnesota in re

State vs. Probate Court of Ramsey County, 78 N. W. Rep.

In

Cluett vs. Morgan, 17 Fed. Rep. 820,

the Court, referring to the cases hereinbefore cited, says:

"From the fact that the failure of complainant to present its claim before the auditors was not treated by the Supreme Court as an absolute bar to its bill, but only as evidence of laches requiring explanation and excuse, we are led to infer that the limitation contained in these acts was not considered applicable to non-resident creditors or pleadable as an ordinary statute of limitations in the federal courts. This inference is strengthened by reference to the earlier cases of *Suydam vs. Broadnax* and *Bank vs. Jolly's Admrs.*, although the question was not squarely presented in either case.

"The whole tenor of these decisions is inconsistent with the idea that foreign creditors are limited in their choice of a forum or subject to other limitations by act. We think the whole enactment should be read together, *and if a non-resi-*

dent creditor is not bound to prove his claim before the probate court, he is not restricted by other limitations of the act requiring all claims to be proven within a limited time. In other words, the limitation is applicable only to such claims as are required to be proven in the manner pointed out by the act. We think, too, that this ruling may be justified upon the broader ground that courts of equity are bound by the statutes of limitations in general only by analogy and may relieve against them in cases of manifest injustice."

While the case of *Hess vs. Reynolds' Admr.*, 113 U. S. 449; 5 Sup. Ct. Rep. 577, was a decision only as to the right of removal to the federal court, it contains this significant language:

"The estate of a decedent is neither a corporation nor a person. It can neither sue nor be sued. It consists of property or rights of property, the title to which passes on his death, with right of possession according to the varying laws of the states, to executors of a will, administrators of estates, heirs or devisees, as the case may be; but neither the principle of convenience nor the statutes of a state can deprive them (the federal courts) of jurisdiction to hear and determine a controversy between citizens of different states, when such a controversy is distinctly presented, because the judgment may affect the administration or distribution in another forum, of the assets of decedent's estate. The controverted question of debt or no debt is one which, if the representative of decedent is a citizen of a different state from that of the other party, the party properly situated has a right, given by the constitution of the United States, to have tried, originally or by removal, in a court of the United States, *which cannot be defeated by state statutes enacted for the more convenient settlement of estates of decedents.*"

It is idle to say that the federal court has jurisdiction to determine controverted questions of debt or no debt, and at the same time to say that while it gives a jurisdiction to determine, it can grant no remedy whatsoever.

And it is the contention of the plaintiff in error that by reason of the statute of the state of Minnesota that the defendant in error is barred of every right. We understand his position to be that, not even an action in equity will lie in the federal court because the Supreme Court of the State of Minnesota has, in construing the statute of the state, held that no action in the state court can be maintained against the devisees or heirs at law, unless the claim was, within the time limited by the probate court, presented to the probate court. As above stated, the only purpose of this action is to establish by judgment of court a debt or no debt. There was no other course for the defendant in error to pursue, because of the recorded proceedings in the probate court. So far as the records of that court show, the administrator was still in possession of all the personal property of the estate. If so, the defendant had a remedy at law and must exhaust that remedy before resorting to a court of equity for the recovery of assets of the estate that had gone into the hands of the heirs at law. It is no concern of the plaintiff in error if the payment not being made, defendant in error should fail in an action in equity against the heirs at law, but, so long as there remain assets in the hands of the

administrator, undistributed, an action in equity would not lie against the heirs at law.

Walter vs. Brown, 63 Fed. 204.

The power of the federal court ceased with the establishment of the demand, unless it becomes necessary to take further action for the purpose of compelling the administrator to recognize the validity of the federal judgment and give to it the force and effect of an adjudicated claim against the estate.

The question of the possession of, or lien upon, or jurisdiction over, the property of the estate is in nowise involved in the case at bar. The only question at issue in the Circuit Court is "*debt or no debt.*"

The plaintiff has no specific lien on the property of the estate, and is not seeking to enforce one. It does not seek to remove the estate from the jurisdiction of the Probate Court. We concede, and always have conceded, that the courts of the United States, in the exercise of their jurisdiction over parties, cannot seize or control the property while in the custody of a court of the state, cannot draw to itself the administration of the estate. And nothing of the sort is attempted in the present case. What is sought is a judgment of the Circuit Court decisive of the issue as to whether the plaintiff has or has not a claim unpaid. That judgment we file in the Probate Court of the state as a claim against the estate, allowed by a court of competent jurisdiction, and to be paid in due course of administration of the estate in the Probate Court. If the bulk

of the estate has been distributed we cannot follow the specific property into the hands of the distributees, but if there is property in the hands of the administrator, we are entitled to have it applied on such judgment. If there is not sufficient property in the hands of the administrator to satisfy the judgment, then, under the statutes of Minnesota, a creditor's bill, after distribution, will lie against the legatees on their liability to apply the assets of the decedent to the payment of his debts. Such estates are impressed with a trust for the payment of the debts of the decedent.

Borer vs. Chapman, 7 Sup. Ct. Rep. 348.

It seems to us that the error which runs through the brief of counsel is the assumption that the Federal Court seeks to infringe upon the statutory rights of the Probate Court and to disturb the possession of the property by the state court. But there is no suggestion that the Federal Court herein take possession of the estate and remove it from the custody of the state court, or interfere in any way with the property of the estate. The contention of counsel seems to be that a lien must be established on the property before it passes from the jurisdiction of the Probate Court or all right is lost; but such is not the holding of this Court in *Borer vs. Chapman*, cited above.

The Court says on page 348, *Vol. 7, Sup. Ct. Rep.:*

"Such estates are impressed with the trust which such creditor had a right to have administered for his benefit. It is upon the ground of such a trust that jurisdiction of the courts of equity primarily

rests in administration suits and in creditors' bills brought against executors or administrators, or, after distribution, against legatees, for the purpose of charging them with a liabilty to apply the assets of the decedent to the payment of his debts. As a part of the ancient and original jurisdiction of courts of equity, it is vested, by the constitution of the United States, and the laws of congress in pursuance thereof, in the Federal Courts, to be administered by Circuit Courts in controversies arising between citizens of different states. It is the familiar and well settled doctrine of this Court that this jurisdiction is independent of that conferred by states upon their own courts and cannot be affected by any legislation except that of the United States." Citing many cases, inclusive of *Payne vs. Hook*, 7 Wallace, 425, and saying:

"In *Payne vs. Hook*, the rule was declared in these words: 'We have repeatedly held that the jurisdiction of courts of the United States over controversies between citizens of different states cannot be impaired by laws of the state which prescribe the modes of redress in their courts, or which regulate the distribution of their judicial power. If legal remedies are sometimes modified to suit the changes in the laws of the state and the practice of their courts, it is not so with equitable. The equitable jurisdiction conferred on Federal Courts is the same as the high court of chancery in England possess, is subject to neither limitation nor restriction by state legislation and is uniform throughout the different states of the Union.' The only qualification in the application of this principle is that courts of the United States in the exercise of their jurisdiction over the parties cannot seize or control property while in the custody of a court of the state."

Williams vs. Benedict, 8 How. 104.

Yonley vs. Lavender, 21 Wall. 276.

Freeman vs. Howe, 24 How. 450.

In *Byers vs. McAuley*, 13 Sup. Ct. Rep. 906, cited in counsel's brief, after referring to a long line of cases decided in this Court, the Court say:

"In *Yonley vs. Lavender*, 21 Wall. 276, it was held that where the statute of a state places the whole estate, real and personal, of the decedent within the custody of the Probate Court of a county, a non-resident creditor may get a judgment in the Federal Court against the resident executor or administrator, and come in under the law of the state for such payment as that law marshaling the rights of creditors awards to creditors of his class; but he cannot, because he has obtained a judgment in the Federal Court, issue execution, and take precedence of other creditors who have no right to sue in the Federal Courts; and if he do issue execution, and sell the lands, the sale is void. * * * The recovery of judgment gave no prior lien on the property, but simply fixed the status of the party, and compelled the administrator to recognize it in the payment of debts. * * * Possession of the *res* draws to the court having possession all controversies concerning the *res*. If original jurisdiction of the administration of the estates of deceased persons were in the Federal Court, it might, by instituting such an administration, and taking possession of the estate through an administrator appointed by it, draw to itself all controversies affecting that estate, irrespective of the citizenship of the respective parties. But it has no original jurisdiction in respect to the administration of a deceased person. It did not, in this case, assume to take possession of the estate in the first instance; and it cannot, by entertaining jurisdiction of a suit against the administrator, draw to itself the full possession of the estate, or the power of determining all claims against or to it. * * *

"A citizen of another state may establish a debt against the estate (*Yonley vs. Lavender*, *Hess vs. Reynolds*); but the debt thus established must take its place and share of the estate as administered

by the Probate Court, and it cannot be enforced by process directly against the property of the decedent. In like manner, a distributee, citizen of another state, may establish his right to a share in the estate, and enforce such adjudication against the administrator personally, or his sureties (*Payne vs. Hook*) or against any other parties subject to liability (*Borer vs. Chapman*), or in any other way which does not disturb the possession of the property by the state court."

132 U. S. 484, *Rio Grande R. Co. vs. Gomila* (*Vinet*);

10 Sup. Ct. Rep. 155.

goes no further than to hold that the administration of the estate cannot be forced out of the Probate Court and into the Federal Court by any proceeding in the Federal Court. The Court say:

"We do not recall any case now where the Federal Courts have not paid respect to the principle that all debts to be paid out of the decedent's estate are to be established in the court to which the law of his domicile has confided the general administration of estates, and that judgments against the deceased, unaccompanied by a seizure of property for their satisfaction, stand in the same position as other claims against his estate, and are paid in like manner. The jurisdiction of chancery to enforce the equitable rights of a non-resident creditor in the case of maladministration or non-administration of the estate of a decedent stands upon a different principle (*Payne vs. Hook*), the rule prevailing as stated in *Hyde vs. Stone*, 20 How, 170, that the jurisdiction of the courts of the United States over controversies between citizens of different states *cannot be impaired by the laws of the state which prescribe the modes of redress in their courts or which regulate the distribution of their judicial power.*"

See, also, *Arrowsmith vs. Gleason*, 9 Sup. Ct. Rep. 240, 241;

Union Bank vs. Vaiden, 18 Howard, 473, 59 U. S. 507.

The probate court does not possess exclusive jurisdiction of the estates of deceased persons. The jurisdiction of the federal court is concurrent so far as the establishing of the debt is concerned.

Chapman vs. Borer, 1 Fed. Rep. 274.

Hess vs. Reynolds, 113 U. S. 73; 5 Sup. Ct. Rep. 378.

Within the limitation prescribed in *Byer vs. McAuley* and *Hess vs. Reynolds* and other cases cited above, the circuit court may do whatever, at any time, the probate court could have done. If the probate court possessed discretionary powers, so does the federal court. To contend otherwise is to admit a jurisdiction but deny the exercise of any rights thereunder. In the case at bar, the circuit court entertained the action and found in favor of the plaintiff, thus holding that plaintiff had a legal right; if a legal right, the exercise of sound judicial discretion must have awarded plaintiff the privilege of presenting those rights to the court.

IV.

As heretofore stated, the claims on which suit was brought in the circuit court are negotiable promissory notes made and to be performed within the state of Minnesota and held and owned part by a citizen of the state of New York and part by a citizen of the state of Iowa.

An examination of the cases cited in the circuit court of appeals and in the supreme court of the United States in counsel's brief and also in all of the cases cited from the state of Minnesota, will show that all said actions were based on domestic contracts or local causes of action and in none of said cases was the issue raised, nor could it be raised, that foreign commercial paper was not included within the provision of the administration laws of the state, except in *Suydam vs. Broadnax* and *Borer vs. Chapman*, 7 Sup Ct. 342, the latter case arising in the state of Minnesota, but the court saying that it was not necessary to determine that issue.

In 172 U. S. 358, *M. K. & T. vs. Krumseig*, cited on page 27 of plaintiff's brief, in which the issue was as to whether or not the defense of usury was available in the federal court, it will be noticed from the portion of the decision quoted by counsel in his brief, that the decision of this court limited such right of defense only to contracts made and sought to be performed within the state, and uses this language:

"If the states, whether New York, Arkansas, Minnesota or others, think that the evils of usury are best prevented by making usurious contracts void and by giving a right to the borrowers to have such contracts unconditionally nullified and cancelled by the courts, such a view public policy *in respect to contracts made within the state and sought to be enforced therein*, is obligatory on the federal court, whether acting in equity or at law."

In *Suydam vs. Broadnax*, above cited, this court says:

"The sixth section declares that all claims against the estates of deceased persons shall be presented to the executor or administrator within eighteen months after the same shall have accrued or within eighteen months after letters have been granted and not after, and all claims not presented within that time shall be forever barred from recovery, but excepts, among other exceptions, debts contracted out of Alabama. This is a statement which, by the exemption it gives to creditors and administrators from suit, would seem to imply denial to creditors of the intestate the right to sue without respect to the foreign country or state in our Union where the debt was contracted. It is a general statute without a direct application to contracts made out of Alabama, and its construction cannot be extended to such contracts. The sovereign state, and one of the states of the Union, if the latter were not restrained by constitutional prohibition, might, by virtue of sovereignty, act upon the contract of its citizens wherever made and discharge them by denying a right of action upon them in its courts. But the validity of such contracts as are made out of the sovereignty or state would necessitate a condition everywhere else according to the *lex loci contractus*. This shows the reason for and force of the rule just given, *and it may be laid down as a safe position that a statute discharging contracts or denying suits upon them without particular mention of foreign contracts, does not include them.*"

In *Van Reimsdyke vs. Kane*, 1 Gall. 371, Judge Story says:

"The broad question is whether a discharge under the insolvency laws of a state is a complete discharge of all debts and contracts with whomsoever and wheresoever contracted, so that no action lies therefor in a court of the United States sitting within the state. * * *

"In order to clear the way for a more exact consideration of the question at bar, it may also be necessary to state that every state has within its sovereignty an authority to bind its citizens everywhere, so long as they continue their allegiance. Unless, therefore, it be restrained by constitutional prohibition, it may act upon the contracts between its own citizens in every country, and, consequently, discharge them by general laws. * * * But if a statute be general without a direct application to foreign contracts, the rule approved by Casaregis seems proper to be adopted, that its construction shall not be extended to such contracts. According to the principles, then, which have been stated, if this had been a contract between two citizens or residents of the state of Rhode Island or a contract made and to be executed in Rhode Island, the discharge under the insolvent laws of the state, would be a good bar. Ought it to be a bar, when the contract was made in a foreign country to be executed in a foreign country and between parties, one of whom was not subject to the jurisdiction of Rhode Island? It has been decided that when the contract is made in one state, the discharge in another, and suit is brought in a third state, the action is not barred. But it is contended that a different rule must prevail in the state courts of Rhode Island, and if so, then also in the courts of the United States sitting within the same state. I will consider this question in both respects and first as to the state of Rhode Island. No authority has been shown that decides that no action upon a foreign contract could have been maintained in the state

courts. It is a mere inference from the language of the act which absolves the debtor from "all debts, etc., of every nature and kind whatsoever." But if the rule of Casaregis be correct that, by the true construction of a general statute it ought not to be extended to extra-territorial contracts unless expressly so declared, the question recurs with all its force, because it will not be pretended that the legislature of Rhode Island have made such a positive provision. The general rule is that a discharge of a contract according to the *lex loci contractus* is good everywhere. The rule is founded on public convenience and the courts of nations. It would seem to follow from the same principle, that the discharge under the municipal laws of a foreign state should not affect the validity of such contract. * * *

"If, therefore, the words of that act of insolvency do not necessarily extend (as I think they do not) to foreign contracts, I can entertain no doubt that they would adjudge therein according to that equity which the usage of nations had settled and applied. I hold it to be a legitimate inference from the doctrine established that a contract made in a foreign country * * * cannot be discharged by a positive regulation of any other court to which the parties have not bound themselves to submit. * * * In controversies affecting citizens of other states and in no degree arising from local regulations, as, for instance, *foreign contracts of a commercial nature*, I think it can hardly be maintained that the laws of a state to which they have no reference, however narrow, injudicious and inconvenient they may be, are to be the exclusive guides for judicial decision. Such a construction would defeat nearly all the objects for which the constitution has prescribed a national court."

This court is untrammeled, as was also the lower courts by any judicial construction of the state court, on this issue.

The following cases have been cited by plaintiff in error:

39 Minn. 212. In this case plaintiff sought to file claim in the probate court two years after the closing of the estate and the issue was as to the discretion of the probate court to open a decree after that lapse of time. The supreme court said that the probate court had no such discretion after such a lapse of time, saying:

"While we do not think that a final decree of distribution of itself causes the estate to pass out of the court and beyond its jurisdiction so as to deprive it of the power to set the decree aside if obtained by fraud or erroneously entered by inadvertence, yet it would require a strong case to warrant a court in so doing after the lapse of two years."

47 Minn. 382, *Hill vs. Nichols*, was an action commenced in the district court against the heirs of one Potter on a six months note made by Potter in 1858. Potter died in 1867. His estate was admitted to probate July, 1889, and the administrator discharged by formal decree in 1890. The action was not commenced until a year after such final discharge. The ground on which the supreme court based its decision was that plaintiff having neglected for more than twenty years to take any proceedings to secure an allowance of and to enforce his claim against the estate, lost the right to have it allowed and enforced. He became barred by his own laches. The contract was a local contract.

61 Minn. 366, *Hautzch vs. Massolt*. The question at issue was whether or not a claim was con-

tingent. The claim was based on a guardian's bond given to the judge of probate of Hennepin county, Minnesota—a Minnesota contract. The court held it was a contingent claim, but in construing sections 104, 107, 110, uses the following language:

"If section 104 is construed literally, it would include, not only the plaintiff's claim, but all claims of every kind arising upon contract. Its language is, 'all' claims arising upon contracts, whether the same be due, not due, or contingent. These three classes include all possible claims growing out of contracts. If there are no implied exceptions in this statute as to any class of contingent claims, then, if a person dies who was a stockholder in a corporation, or had conveyed lands by a warranty deed, or signed official bonds as a surety, or given leases for a term of years, with covenants to indemnify the lessee against damages by water from the pipes on the demised premises, creditors, obligees, and covenantees who would not be forever barred of all right to any redress against his property must hasten to the probate court, and prove their claims, *within the 18 months from the giving notice of the order limiting the time to prove its claims against the estate*. How can they be proved? Counsel for respondent answers: 'State the particulars of the claim under the provisions of section 104.' But, until a contingent claim becomes absolute, the amount thereof cannot be liquidated, so that it can be allowed by the court, and the amount thereof stated in the order allowing it, as required, by section 110.

"But let us assume that, in order to entitle a contingent claim to be allowed, it is not necessary that it should first become absolute and capable of liquidation. Still, we are confronted with the question, how shall it be paid? The statute provides for the payment of all claims which are certain and liquidated, whether due or not due; also for contingent claims which become absolute and capable of liquidation, *within the 18 months allowed for*

the presentation and proof of claims, for, if they become absolute within the limited time, they can be paid as other claims; but, for claims which are contingent when this time expires, there is absolutely no provision of the statute for their payment, or provision for retaining in the control of the court any funds to pay them in the future in case they become absolute, or for suspending the settlement of the estate until that event occurs, if ever."

66 Minn. 246, *State vs. Probate Court of Rock Co.*, arose on certiorari to review an order of the probate court adjudging relator guilty of contempt in not obeying an order for the appointment of an agent on whom service might be made of a summons of the district court of said county in an action in the district court to determine a claim against the estate, the relator being a non-resident executor and the claim being for the non-payment of subscription to stock of a Minnesota corporation —a local contract. All the court decided was that the district court did not have jurisdiction, as the claim was not contingent and could be proved in the probate court. The presentation of the claim within the time prescribed by the probate court was not at issue.

78 N. W. Rep. 95, *Fitzhugh vs. Harrison*, was an appeal from the probate court of St. Louis county from a claim allowed against the estate, arising on a contract made and to be performed in the county. The contention of appellant was that because it was contingent, the probate court had no jurisdiction. The supreme court held that the claim was

not a contingent one and the probate court had jurisdiction. There was no issue in the case as to the presentation of claim.

63 Fed. Rep. 208, *Walker vs. Brown.* The opinion was written by Judge Thayer, who wrote the opinion in the case at bar in the court of appeals. The issue in said cause was, Can a suit in equity be maintained on a purely legal demand? We fail to find anything in the case bearing out the contention of plaintiff in error.

4 Howard, 498, *Aspin vs. Nixon.* The only matter at issue was, Did a decree of the chancery court in England constitute an estoppel in the United States courts of Pennsylvania? Under the circumstances of that case the court said it did not and, incidentally, used the language quoted in brief of plaintiff in error. Such language would be applicable if in the case at bar defendant in error sought to disturb the assets of the estate in the hands of the probate court. But such is not the case.

5 Peters, 523, *Smith vs. Union Bank.* The only issue was the classification and priority of debts, and the court held the *classification* of the state in which the estate was being administered controlled.

76 U. S. 754, *Walker vs. Walker's Executors.* The language quoted in the brief was used relative to an objection that suit should have been brought in Rhode Island where deceased had his domicile and where his estate was insolvent, rather than

in Massachusetts where ancillary administration was obtained and the estate was not insolvent. All that the court determined was that plaintiff was entitled to share in the estate equally with the Massachusetts creditors.

113 U. S. 449, *Morgan vs. Hamlet.* The Arkansas statute differs essentially from the Minnesota statute. The former makes an absolute limitation of two years; the latter, a limitation of eighteen months. Anything less than eighteen months is a limitation not by statute but by order of the court. This action was brought before the expiration of eighteen months.

132 U. S. 484, *Rio Grande R. Co. vs. Gomila*, 10 Sup. Ct. Rep. 155. All this court decided was that property of a debtor brought within the jurisdiction of the circuit court of the United States by seizure under process issued out of that court, remained in its custody to apply in satisfaction of a judgment, notwithstanding the subsequent death of the judgment debtor and probate proceedings in the state of his domicile, saying:

"The rule prevailing, as stated in *Hyde vs. Stone*, 30 Howard, 170, that the jurisdiction of the United States over controversies between citizens of different states, cannot be impaired by the laws of the state which prescribe modes of redress in their courts or which regulate the distribution of their judicial powers."

172 U. S. 358, *M., K. & T. Trust Co. vs. Krumseig*, was an action on note and defense of usury interposed. All that this court decided was that usury being a statutory defense, the federal courts deal-

ing with such questions must look to the laws of the state where the transaction took place. It was an intermediate right which was virtually written into the contract, being a law of the state in which the contract was made and where it was to be executed.

103 U. S. 559, *Ouachita County vs. Wolcott.* This court placed the decision on the ground that a proceeding was pending in the state court against the holder of county warrants which were non-negotiable instruments. Such holders of warrants assigned them to plaintiff who then commenced action in the federal court, while the proceedings in the state court were still pending. All that the case decides is that the law of Arkansas is a part of the contract of a county warrant and to be read into the contract, and when proceedings are commenced against citizens of Arkansas according to the provisions of said law, such proceedings cannot be rendered nugatory by assigning the warrants to a non-resident and such non-resident commencing action in the federal court.

72 U. S. 419, *Ewing vs. City of St. Louis.* The court held only that plaintiff had an adequate remedy at law by writ of certiorari in the state court, and for that reason an action in equity would not lie in the federal court. No principle involved therein is involved in the case at bar.

80 U. S. 243, *Ex parte McNeal.* We cannot understand in what respect the above case is at all applicable to the case at bar. The court simply de-

termined that a licensed pilot was entitled to the fees prescribed by statute of New York, whether he brought action in the state court or in the federal court. That is to say, that the measure of damage was the same in whatever court the action should be brought.

It is not improper, we think, for us to say that this case was tried in the circuit court by Judge William Lochren, who, for more than twenty years before he was appointed to the federal bench, was judge of the district court of the state, than whom there is no man in this state more familiar with the statute law of the state of Minnesota; that Judge Walter Sanborn of the circuit court of appeals, Eighth circuit, from the time of his admission to the bar until his appointment to his present position, practiced in the courts of this state and is most intimately acquainted with the decision of the courts of the state and the policy of its laws.

The case was most carefully considered by the circuit court, most thoroughly investigated by the circuit court of appeals, and we suggest that the construction of the statute laws of their own state by such eminent judges, is entitled to much weight.

We respectfully submit that the judgment of the circuit court and of the circuit court of appeals should be affirmed.

EDWARD C. STRINGER,
McNEIL V. SEYMOUR,
Attorneys for Defendant in Error.

Supreme Court of the United States.

No. 39.—October Term, 1902.

The Security Trust Company, as Administrator of the estate of Sumner W. Matteson, deceased, Petitioner, *vs.* The Black River National Bank of Lowville.	On writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

[December 1, 1902.]

In January, 1897, the Black River National Bank of Lowville brought an action in the Circuit Court of the United States for the District of Minnesota against the Security Trust Company of St. Paul, as administrator of the estate of Sumner W. Matteson, deceased. The complaint alleged that the plaintiff was a corporation duly organized under the national banking laws of the United States, having its place of business at Lowville, Lewis County, and State of New York; that the defendant was a corporation created by the laws of the State of Minnesota, having its place of business at the city of St. Paul and State of Minnesota, and had been duly appointed administrator of the estate of Sumner W. Matteson, deceased, by the proper probate court of Ramsey County, Minnesota, on or about the 3d day of September, 1895; that the said Matteson had been during his lifetime a resident and citizen of the State of Minnesota.

For a cause of action the complaint averred that on the 27th day of February, 1894, the said Matteson had executed his two promissory notes, wherein for value received he promised to pay to the order of James H. Easton and Company, at the First National Bank of Decorah, Iowa, the sum of twenty-five hundred dollars, four months after date, with interest thereon at the rate of eight per cent per annum from date until paid; that thereafter, on March 22, 1894, and before the maturity of said notes, the said James H. Easton and Company, for value received, sold and assigned the same to the plaintiff; that said James H. Easton and Company was a copartnership doing business at Decorah, and that all the members thereof were residents and citizens of the State of Iowa; that no part of said notes has ever been paid except the interest thereon to the 24th day of November, 1894.

The complaint further alleged that the defendant, as administrator of the estate of Sumner W. Matteson, had in its hand and under its control property, money and effects which belonged in his lifetime to said Matteson, more than sufficient to pay the amount due the plaintiff; that the estate of said Matteson was in process of settlement in the probate court of Ramsey County, State of Minnesota, and had not been fully and finally settled and probated, and that said administrator had never been discharged and was still the administrator of the estate of said Matteson,

deceased; and plaintiff demanded judgment against the defendant in the sum of five thousand dollars and interest thereon from the 24th day of November, 1894.

On February 12, 1897, the defendant appeared and answered, admitting those allegations of the complaint which alleged the making and transfer of said notes, and that the same remained unpaid in the hands of the plaintiff, but denying that the defendant had in its hands as administrator of said Matteson any money or property applicable to the payment of said notes. The answer also alleged that the estate of said Matteson had been fully settled, probated and administered upon and discharged from the probate court long prior to the commencement of plaintiff's action, and that the defendant had long before the commencement of this action turned over all property, money and effects of said estate remaining in its hands, to the persons entitled thereto, and that defendant long before the commencement of this action had been discharged as such administrator, and was not when said action was brought and is not now administrator of the estate of said decedent.

On March 20, 1897, the plaintiff filed a reply, traversing the allegations of the answer. Thereafter and on the 18th day of January, 1899, a stipulation of facts and waiver of jury trial were filed. In the stipulation of facts it appeared that the estate of Matteson had been settled, administered upon and discharged from the probate court prior to the commencement of plaintiff's action in the Circuit Court of the United States.

On April 17, 1899, the cause came on to to be heard, on the pleadings and stipulation of facts, and judgment was entered in favor of the plaintiff in the sum of $6,782.89, to be paid and enforced out of the property and effects of the intestate, Sumner W. Matteson, deceased; and it was ordered further that this judgment be duly certified by this court to the probate court of Ramsey County as a claim duly approved, established and allowed against the estate of Sumner W. Matteson, deceased.

Subsequently the cause was taken to the United States Circuit Court of Appeals for the Eighth Circuit, where on October 17, 1900, the judgment of the Circuit Court was affirmed, on authority of the case of the *Security Trust Company, as Administrator of Sumner W. Matteson, deceased*, v. *William H. Dent, as Receiver of the First National Bank of Decorah*, reported in 104 Fed. Rep. 380.

Whereupon a writ of certiorari was prayed for and allowed, and the cause was brought to this court.

Mr. Justice SHIRAS delivered the opinion of the Court.

This was a suit brought in January, 1897, in the Circuit Court of the United States for the District of Minnesota, by the Black River National Bank of Lowville, incorporated under the national banking laws of the

United States, and doing business in the county of Lewis and State of New York, against the Security Trust Company of St. Paul, Minnesota, as administrator of the estate of Sumner W. Matteson, deceased, seeking to recover the sum of five thousand dollars and interest thereon, due on certain promissory notes made by said Matteson in his lifetime, and which were alleged to be the property of the said national bank.

No defense was interposed as respected the execution of the notes or the ownership of the same by the bank. It was admitted that the Security Trust Company had been, on September 3, 1895, duly appointed by the probate court of Ramsey County, Minnesota, administrator of the estate of said Matteson. The defendant, however, alleged, in its answer that, as the action was not brought until after the time limited by the order of the probate court for the filing, examination and allowance of claims against Matteson's estate, nor until after the examination and allowance of the administrator's final account, under the laws of the State of Minnesota, the official existence of the defendant company as administrator had ceased, and therefore no action could be maintained against it, and also that the right to a judgment on the notes in suit was, by the laws of Minnesota, forever barred, although they were owned by a non-resident of the State, and a recovery was sought in a Federal court.

Two inquiries are presented to us—first, whether, by virtue of the State statutes, the estate of Matteson had been so fully settled and administered, before the present action was brought, as to operate as a discharge of the administration, and as a bar to a right of the plaintiff to recover against the estate in the State courts; and, second, if the first question must be affirmatively answered, whether, notwithstanding such a condition of the statutory law of the State, an action can be successfully maintained by a citizen of another State in the Circuit Court of the United States on a cause of action not barred by the general statute of limitations of the State.

It is scarcely necessary to say that, as respects the first of these inquiries, we must find an answer in the provisions of the constitution and statutes of Minnesota as interpreted and construed by the Supreme Court of that State.

The State constitution and statutory provisions bearing upon the question involved are the following:

"Constitution, Art. VI, Sec. 7. There shall be established in each organized county in the State a probate court which shall be a court of record, and be held at such times and places as may be prescribed by law. . . . A probate court shall have jurisdiction over the estates of deceased persons and persons under guardianship, but no other jurisction, except as prescribed by this constitution."

General Statutes, 1894:

"SEC. 4523. The probate court at the time of granting letters testamentary or of administration shall make an order allowing to the executor

or administrator a reasonable time, not exceeding one year and six months, for the settlement of the estate.

"SEC. 4524. The probate court may, upon good cause shown by the executor or administrator, extend the time for the settlement of the estate not exceeding one year at a time, unless in the judgment of the court a longer time be necessary."

"SEC. 4527. When there is not sufficient personal estate in the hands of the executor or administrator to pay all the debts and legacies and the allowance to the widow and minor children, the probate court may, on petition of the executor or administrator, order the sale of the real estate or so much thereof as may be necessary to pay the same."

Section 4471 provides that real estate shall descend subject to the debts of the intestate.

"SEC. 4638. Every executor or administrator shall render his account of administration within the time allowed him for the settlement of the estate and at such other times as he is required by the court, until the estate is wholly settled.

"SEC. 4639. When the estate is fully administered the executor or administrator shall petition the probate court for an order fixing a time and place in which it will examine, settle and allow the final account of the executor or administrator, and for the assignment of the residue of the estate to the persons entitled thereto by law. The final account shall be filed in the probate court at the time of filing said petition.

"SEC. 4640. Upon the filing of said petition the court shall make an order fixing a time and place for hearing the same. Said order shall be published according to law.

"SEC. 4641. On hearing such petition, the probate court shall examine every executor and administrator upon oath as to the truth and correctness of his account before the same is allowed; but such examination may be omitted when no objection is made to the allowance of the account and there is no reason to doubt the justness and correctness thereof; and the heirs, legatees and devisees may be examined on oath upon any matter relating to the account of any executor or administrator whenever the correctness thereof is called in question. If from such examination the account is found just and correct the probate court shall allow and settle the same, and upon satisfactory evidence shall determine the rights of the persons to the residue of said estate and unless partition is asked for and directed as hereinafter provided, make a decree accordingly, and assigning said residue to the persons thereto entitled by law.

"SEC. 4642. In such decree the court shall name the persons and the proportion or parts to which each is entitled, and if real estate, give a description as near as may be of the land to which each is entitled; and such persons may demand and recover their respective shares from the executor or administrator, or any other person having the same; and a certified copy of any decree of distribution of real estate may be recorded in the office of the register of deeds in every county in this State in which are situated any of the lands described in such decree; and such register of deeds shall enter in his reception book the name of the deceased as grantor, and the names of the heirs, legatees or devisees, as grantees, and shall make in such reception book so many separate grantor and grantee entries for such decree as there are persons taking real estate in in such county under said decree."

"SEC. 4509. At the time of granting letters testamentary or of administration, the court shall make an order limiting the time in which creditors may present claims against the deceased for examination and allowance, which shall not be less than six months nor more than one year from the date of such order; said order shall fix the time or times and place in which the court will examine and adjust claims and demands of all persons against deceased. No claim or demand shall be received after the expiration of the time so limited, unless for good cause shown, the court may, in its discretion, receive, hear and allow such claim upon notice to the executor or administrator, but no claim shall be received or allowed presented within one year and six months from the time when notice of the order is given, as provided in the next section, and before final settlement, and the allowance or disallowance of any claim shall have the same force and effect as a judgment for or against the estate.

"SEC. 4510. The order prescribed in section one hundred and two shall be published according to law, and shall be notice to all creditors and persons interested.

"SEC. 4511. All claims arising upon contracts, whether the same be due, not due, or contingent, must be presented to the probate court within the time limited in said order, and any claim not so presented is barred forever; such claim or demand may be pleaded as an offset or counterclaim to an action brought by the executor or administrator. All claims shall be itemized, and verified by the claimant, his agent or attorney, stating the amount due, that the same is just and true, that no payments have been made thereon which are not credited, and that there are no offsets to the same to the knowledge of affiant. If the claim be not due, or be contingent, when presented, the particulars of such claim must be stated. The probate court may require satisfactory vouchers or proofs to be produced in support of any claim."

"SEC. 4514. No action at law for the recovery of money only shall be brought in any of the courts of this State against any executor, administrator or guardian upon any claim or demand which may be presented to the probate court, except as provided in this code. No claim against a decedent shall be a charge against or lien upon his estate unless presented to the probate court as herein provided within five years after the death of such decedent: *Provided*, That this provision shall not be construed as affecting any lien existing at the date of such death: *Provided, further*, That said provision shall not be construed as affecting the right of a creditor to recover from the next of kin, legatee or devisee to the extent of assets received. This provision shall be applicable to the estate of persons who die prior as well as to those who may die after adoption of this code."

"SEC. 4517. Upon the allowance or disallowance of any claim the court shall make its order allowing or disallowing the same. The order shall contain the date of allowance and the amount disallowed, and be attached to the claim with the offsets, if any."

"SEC. 4522. In case of appeal from the allowance or disallowance of any claim in whole or in part, the District Court shall certify to the probate court the decision or judgment rendered therein."

Section 4665 provides for an appeal to the District Court.

Section 4668 provides for serving notice of appeal.

Section 4672 provides that the District Court shall try the case as if originally commenced in that court.

Section 4673 provides that pleadings shall be made up as in civil actions, and the issues of fact tried as in other actions.

Section 4676. In case of a reversal or modification of the order appealed from the District Court makes such order as the probate court should have made, and certifies its judgment to the probate court.

"SEC. 4730. The probate court may, at any time, correct, modify or amend its records to conform with the facts in the same manner as a District Court."

State v. *Probate Court of Sibley County*, (33 Minn. 94,) was an application to the District Court for a writ of prohibition to the probate court, the latter court having granted a petition to set aside a sale of real estate confirmed by the probate court, and it was *held* by the Supreme Court of the State that there was no jurisdiction in the probate court, saying:

"The want of jurisdiction in this case is still further emphasized by the fact that the administration has been closed by the allowance of the administrator's account and his discharge, and there is no attempt to reopen it. So long as it remains closed the probate court has no more jurisdiction over the estate, or the property belonging to it, than if there never had been any administration, and there was no attempt to institute one. The jurisdiction of the court has been fully exhausted, and it can do nothing further unless it is restored in the manner pointed out by the statute."

In *State ex rel. Dana* v. *Probate Court of Ramsey County*, (40 Minn. 296,) where, upon an application for the final settlement of his accounts by the administration of an estate and for a final discharge, the probate court made an order allowing the account and discharging the administrator. Such order was held by the Supreme Court to be a final order discharging the administration of the estate, and that, as a final decree discharging the administration, it operated to discharge the lien of creditors upon real estate which might have been previously sold to pay debts. The opinion of the court was thus expressed:

"The object of the application on the part of the acting administrator was to submit his final account and close the administration. The order made was evidently so intended, and must be construed as a final order discharging the administration of the estate. The parties had their remedy by appeal, but the order could not be attacked collaterally or treated as void, so as to warrant subsequent proceedings to reach the real estate, as if the administration was still in progress and the estate still unsettled.

"The omission of the land from the inventory, and the subsequent discovery of the real estate of the deceased which was not reduced to assets by the administrator or distributed to the heirs, do not operate to revive the administration and open the judgment or warrant further proceedings. The land descended to the heirs, subject to the claims of administration upon it. The effect of a decree assigning the real estate to the heirs is simply to discharge it from the administration, and, of course, the final discharge of the administration must discharge the lien of the creditors."

In *Schneider* v. *Stark*, (61 Minn. 91,) it was held that where the estate of a deceased person has been fully administered, and a decree of distribution has been made, assigning the residue of the estate in the hands of the personal representative to the parties entitled thereto, the jurisdiction of the probate court is ended; and, if the personal representative does not deliver the property to the distributees, they may bring an action against him in the District Court. It was said, per Mitchell, J.:

"The probate code neither authorizes nor provides for an assignment of any part of the estate of a deceased person until after the estate has been fully administered. It contemplates but one decree of distribution, by which the entire residue of the estate shall be assigned to those entitled to it, specifying the proportion or part to which each is entitled. (Secs. 4639–4642.) Read in the light of the statute, and of the admissions of the answer, we think the complaint would fairly admit of being construed as alleging that all this had been duly done, and that the proportion of the estate assigned to the plaintiff was an undivided fifth. If this was the state of facts, the jurisdiction of the probate court over the property had ended. The effect of a decree of distribution is to transfer the title to the personalty and the right of possession of the realty from the personal representative to the distributees, devisees or heirs. The property then ceases to be the estate of the deceased person, and becomes the individual property of the distributees, with the full right of control and possession, and with the right of action for it against the personal representative, if he does not deliver it to them. If such an action is necessary, resort must be had to some other forum, for the probate court has no further jurisdiction. (*Harley* v. *Hamilton*, 37 Minn. 160.)"

State ex rel. Matteson v. *Probate Court of Ramsey County*, (87 N. W. Rep. 783,) is the last expression of the Supreme Court of Minnesota on this subject to which we have been referred. The syllabus, prepared by the court, is as follows:

"1. The probate code of this State makes no provision for the formal discharge of an administrator, but the necessary legal effect of an order of the probate court allowing the final account of the administrator and its final decree of distribution, assigning the whole of the estate to the heirs and distributees, is to remove the estate of the deceased from the jurisdiction of the court, and to render the office of administrator, which depends upon such jurisdiction, *functus officio*. 2. After the estate has been so settled and assigned, and while the final decree of distribution remains unreversed and unmodified, the probate court has no jurisdiction to entertain a petition to issue a citation to the administrator requiring him to further account for the property belonging to the estate which is in his possession, or came into his possession."

The facts and law of the case were then stated in the opinion of the court:

"S. W. Matteson, a resident of the county of Ramsey, having real and personal property therein, died intestate on July 22, 1895. The Security Trust Company was duly appointed by the probate court of such county, on September 3, 1896, administrator of his estate, and it duly qualified as such, and filed in such court an inventory of the estate. The

probate court, on the same day, by its order, which was duly published, limited the time for presenting claims against the estate to six months from the date of the order. All claims against the estate presented to the court within the time limited and allowed by the court were paid by the administrator in the due course of administration. Thereafter, and on March 31, 1896, the administrator filed with the court its petition, representing that it had fully administered the estate, paid all the debts against the estate allowed by the court, and the expenses of administration, and asking for the allowance of its final account, and the distribution of the residue of the estate to the persons entitled thereto. Such proceedings were thereafter duly had upon the petition, that the court, on April 27, 1896, allowed the final account of the administrator, and made and entered its decree of distribution of the residue of the estate, describing it, and thereby assigned the property therein described and all other estate of the intestate in the State of Minnesota to his heirs and distributees, naming them, and determining the share of each.

"Afterwards, and on November 21, 1896, the Security Trust Company filed with the probate court its petition, representing that in drafting such final decree certain clerical errors were made, stating them, whereby certain parcels of real estate were erroneously described therein, and other parcels omitted therefrom, and praying that the decree be amended so as to correct the errors. The court made its order so correcting the decree. Neither the order allowing the administrator's account nor the final decree of distribution has ever been opened or set aside. On December 16, next following, all the heirs and distributees named in the decree transferred and conveyed to the Matteson estate, incorporated, all the property so assigned to them by the final decree. But the Security Trust Company still has in its possession and now holds certain stocks as collateral security under a pledge made to it by the intestate for the payment of a debt owed by him to it at the time of his death. The value of the stocks exceeds the amount of the debt which they secured. No order has ever been made by the probate court in terms discharging the administrator. The Black River National Bank, a non-resident creditor of the intestate, on January 4, 1897, made application to the probate court for leave to file its claim against his estate, and have it allowed and paid out of the assets of the estate. This was denied by the court for the reason that the administration of the estate had been closed, and the court had no further jurisdiction in the premises. Afterwards the bank and another non-resident creditor each brought an action on their respective claims, which had never been presented to the probate court, against the Trust Company, as administrator, in the Circuit Court of the United States for the District of Minnesota. Such proceedings were had therein that judgment, on April 17, 1899, was rendered in favor of the plaintiff in each case for the full amount claimed against the administrator. That court directed the judgments to be certified to the probate court as claims duly established against the estate of the intestate, and it was done, but the administrator refused to take any steps for the payment of either of the judgments. Thereupon the relator herein presented to the probate court a petition asking it to issue a citation to the trust company, as such administrator, requiring it to file an account of any property in its possession belonging to such estate, and to report what disposition had been made of the property inventoried as belonging thereto, and to pay so much of the judgments as could be paid

from such property. The court refused to entertain the petition, or to make any order in the premises, for the sole reason that it had no jurisdiction to take other or further steps in the administration of the estate. The relator then sued out of the District Court of Ramsey County an alternative writ of mandamus based upon the facts here stated, which was directed to the probate court and the judge thereof. The answer of the respondents was an admission of such facts, and upon them the District Court awarded judgment, denying a peremptory writ of mandamus, and discharging the alternative writ. The relator appealed from the judgment to this court.

"The question presented by these facts for our consideration relates solely to the legal effect of the final decree of distribution, assigning the residue of the estate of the decedent to the heirs and distributees made by the probate court after the settlement and allowance of the final account of the administrator. Stated concretely, the question is: Did the jurisdiction of the probate court over the estate in question cease, and the office of the administrator become *functus officio*, by force of the order of the court allowing the administrator's final account, and its final decree of distribution assigning the residue of the estate? We answer the question in the affirmative. The jurisdiction of the probate court in Minnesota is not conferred by the common law, nor by any statute of the State, but by our constitution, and is limited to 'jurisdiction over the estates of deceased persons and persons under guardianship.' (Const. art. 6, sec. 7.) It follows that, in cases where a court of probate acquires jurisdiction over the estate of a particular decedent, such jurisdiction is ended, and the office of the administrator, which depends upon such jurisdiction, becomes *functus officio*, whenever such estate passes by operation of law from its final control. No argument can make this obvious proposition clearer, for it is self-evident that, if the jurisdiction is limited to the estate of such deceased person, and the sole basis of such jurisdiction, the estate passes from its control, and the right to the possession and control thereof rests by operation of law in the heirs and distributees, it has no longer any jurisdiction in the premises. It is true that our probate code contains no provision for the formal discharge of an administrator, but the necessary theory and effect of its provisions as to the settlement of his account and the final decree of distribution, as interpreted by the repeated decisions of this court, are to divest the probate court of further jurisdiction when such final decree is made, and to render the office of administrator *functus officio*, unless such decree is set aside on motion, or reversed on appeal. A clear illustration of this proposition is found in the decision of this court in the case of *Harley* v. *Hamilton*, (37 Minn. 160,) holding that the probate court had no jurisdiction to entertain proceedings for the partition of the real estate of a decedent among the heirs and devisees after the administration was closed, and the land assigned to them in common by a final decree of distribution, for the reason that, when such decree was entered, the property passed out of the control of the court and it had no further jurisdiction."

The court then proceeded to cite and approve previous decisions, and particularly the language of Mitchell, J., in the case of *Schmidt* v. *Stark*, (61 Minn. 91,) hereinbefore quoted. Other observations were made by the court pertinent to the case before us, as follows:

"It is, however, urged by counsel for the relator that the removal of the property, that is, the estate, from the jurisdiction of the probate court in nowise affects the continuance in office of an administrator of an estate. To hold otherwise, it is claimed, would be a divesting of the probate court of all authority to execute its decree of distribution, leaving the administrator in possession of the estate, and the heirs and distributees remediless. It necessarily follows from the concession of counsel, although not intended by him, that the office of administrator becomes *functus officio* when the estate is removed, as the result of the decree of distribution, from the jurisdiction of the court, for the office of administrator springs out of and depends for its continued existence upon the jurisdiction of the court over the estate. As well might it be claimed that the branch of a tree can live and put forth its leaves and blossoms after its roots are dead, as to claim that the office of administrator can survive the jurisdiction of the court over the estate of which administration was granted. It is not necessary for the probate court, if it could do so, to retain jurisdiction to enforce the final decree of distribution; the remedy of the distributees in case their respective shares of the residue of the estate are withheld from them by the administrator is an action in the District Court against him or against him and his bondsmen. (*Schmidt* v. *Stark*, 61 Minn. 91.)

"It is further urged on behalf of the relator that neither the probate court nor the administrator considered that the allowance of the final account and the entry of the decree of distribution ended the jurisdiction of the court, for it afterwards, on the petition of the administrator, amended the decree. It is immaterial what they considered, for the view of either as to the effect of the decree could not change its legal result. The decree was corrected, not in the exercise of any jurisdiction over the estate, but by virtue of the power of the court to amend its records to conform with the facts; that is, to make the records speak truly as to the past official acts of the court. (Gen. Stat. sec. 4730.)

"Lastly, it is urged by the relator that the administrator still has certain stocks in its possession belonging to the estate, and that it may also have after-discovered personal property of the intestate which it may not have disclosed to any one. There is no basis for this assumption in the admitted facts, except that the trust company holds certain stocks as collateral to secure its individual debt against the intestate. But, were it otherwise, the fact still remains that all such stocks and after-discovered property, if any, passed by the decree to the heirs and distributees, for it assigns to them, not only the property therein specifically described, but also all other estate of the deceased in the State of Minnesota. It follows that the probate court rightly declined to issue the citation."

Some criticism is made, in the brief of the defendant in error, of the decision of the Supreme Court of Minnesota in this case; that the issue was feigned and an imposition upon the Supreme Court, and that the purpose of the decision was to forestall the decision of this court.

If, indeed, the judgment of the Supreme Court in that case were relied on as adjudging a case which had already passed into judgment in the Circuit Court of the United States we might readily agree, as urged by the defendant in error, that the decision of the Supreme Court of Minnesota "should receive little, if any, weight, by this court in the consideration of

this case." But that decision is cited and relied on by the plaintiff in error, not as an adjudication of the facts in controversy here, but as an interpretation of the statutes of the State. Cases may be found where a decision made by a State Supreme Court, even in exposition of State statutes, *after* the institution of litigation in a Federal court, wherein this court has refused to follow such a decision, if in it the State court has departed from its previous decisions, which were in force and relied upon by the Federal suitor. (*Burgess* v. *Seligman*, 107 U. S. 33; *Carroll County* v. *Smith*, 111 U. S. 556.)

Here, however, the Supreme Court of Minnesota, in its last opinion, did not depart from or modify its previous decisions on the subject. On the contrary, it based its reasoning and conclusions upon its frequent previous decisions.

Nor are we permitted on the record in that case to impute to the parties therein an attempt to mislead the court or to improperly invoke its jurisdiction. The case seems to have gone before the probate court, the District Court and the Supreme Court, in the usual course of procedure, and the decision finally rendered by the Supreme Court must be received by us as a valid exposition of the law.

The conclusion to which we are brought, by an examination of the statutes of the State of Minnesota and of the decisions of the courts of that State in construing and applying them, is, that had a suit against an administrator of an estate been brought in the courts of that State, after the expiration of the period limited by the order of the probate court, in which creditors may present claims against the deceased for examination and allowance, and after an allowance of the administrator's final account, and a final decree of distribution, such suit could not have been maintained.

We are now to consider whether such a suit can be successfully maintained in a Federal court by a non-resident owner of a claim against the estate of a decedent.

Some general principles have become so well settled as to require only to be stated. One of these is that a foreign creditor may establish his debt in the courts of the United States against the personal representative of a decedent, notwithstanding the fact that the laws of the State relative to the administration and settlement of decedents' estates do in terms limit the right to establish such demands to a proceeding in the probate courts of the State. (*Union Bank of Tennessee* v. *Jolly's Adm'rs*, 18 How. 503; *Lawrence* v. *Nelson*, 143 U. S. 215; *Byers* v. *McAuley*, 149 U. S. 608.)

Another principle, equally well settled, is that the courts of the United States, in enforcing claims against executors and administrators of a decedent's estate, are administering the laws of the State of the domicile, and are bound by the same rules that govern the local tribunals. (*Aspden* v. *Nixon*, 4 How. 498.)

"The Circuit Courts of the United States, with full equity powers, have jurisdiction over executors and administrators, where the parties are citizens of different States, and will enforce the same rules in the adjudgment of claims against them that the local courts administer in favor of their own citizens." (*Walker* v. *Walker's Ex'r*, 9 Wall. 745.)

In *Yonley* v. *Lavender*, (21 Wall. 276.) it was decided that while a non-resident creditor may get a judgment in a Federal court against a resident administrator, and come in on the estate according to the law of the State for such payment as that law, marshalling the rights of creditors, awards to debtors of his class, yet he cannot, because he has obtained a judgement in a Federal court, issue execution and take precedence of other creditors who have no right to sue in the Federal courts, and if he do issue execution and sell lands, the sale is void.

The reasoning of this case is worthy of quotation:

"The several States of the Union necessarily have full control over the estates of deceased persons within their respective limits, and we see no ground on which the validity of the sale in question can be sustained. To sustain it would be in effect to nullify the administration laws of the State by giving to creditors out of the State greater privileges in the distribution of estates than creditors in the State enjoy. It is easy to see, if the non-resident creditor, by suing in the Federal courts of Arkansas, acquires a right to subject the assets of the estate to seizure and sale for the satisfaction of his debt, which he could not do by suing in the State court, that the whole estate, in case there were foreign creditors, might be swept away. Such a result would place the judgments of the Federal court on a higher grade than the judgment of the State court, necessarily produce conflict, and render the State powerless in a matter over which she has confessedly full control. Besides this, it would give to the contract of a foreign creditor made in Arkansas a wider scope than a similar contract made in the same State by the same debtor with a home creditor. The home creditor would have to await the due course of administration for the payment of his debt, while the foreign creditor could, as soon as he got his judgment, seize and sell the estate of his debtor to satisfy it, and this, too, when the laws of the State in force when both contracts were made provided another mode for the compulsory payment of the debt. Such a difference is manifestly unjust and cannot be supported. . . . The administration laws of Arkansas are not merely rules of practice for the courts, but laws limiting the rights of parties, and will be observed by the Federal courts in the enforcement of individual rights. . . . It is possible, though not probable, that State legislation on the subject of the estates of decedents might be purposely so framed as to discriminate injuriously against the creditor living outside of the State; but if this should unfortunately ever happen, the courts of the United States would find a way, in a proper case, to arrest the discrimination, and to enforce equality of privileges among all classes of claimants, even if the estate were seized by operation of law and entrusted to a particular jurisdiction."

In *Morgan* v. *Hamlet*, (113 U. S. 449,) it was held that the statute of Arkansas, that "all demands not exhibited to the executor or administrator, as required by this act, before the end of two years from the granting

of letters, shall be forever barred," begins, on the granting of letters of administration, to run against persons under age out of the State.

The doctrine of the case of *Yonley* v. *Lavender*, (21 Wall. 276,) was approved in *Byers* v. *McAuley*, (149 U. S. 615,) wherein it was held that the administration laws of a State are not merely rules of practice for the courts, but laws limiting the rights of parties, to be observed by the Federal courts in the enforcement of individual rights.

In *Pulliam* v. *Pulliam*, (10 Fed. Rep. 55, 76,) the distinction between ordinary statutes of limitation and statutes of administration of the estates of decedents limiting the time within which creditors must prove their claims, is pointed out in respect that the latter are rules of property as well as statutes of limitation, and it was said by Hammond, J., after citing *Union Bank* v. *Jolly's Ex.*, (18 How. 504;) *Payne* v. *Hook*, (7 Wall. 430,) and other cases:

"These cases, like many others, are only intended to protect the judicial power of the United States from encroachment by preserving to it the remedies and forms of proceeding which are granted with it, and not at all to set it above the legislative control of the States in matters pertaining to their jurisdiction. The cases cited from the Supreme Court do not, in my judgment, establish or in the least authorize the doctrine that State statutes, prescribing the time within which the creditor of a decedent must present or sue upon his claim in order to entitle him to share in the assets, and having the effect these do, are not binding on this court."

In *Dodd* v. *Ghiselin*, (27 Fed. Rep. 405,) involving the administration of a decedent's estate, and where it was contended that non-resident minors had a right to have the laws of the State of Missouri regulating the matter disregarded in the Federal court, but it was held otherwise, per Brewer, J.: That the law of the State providing for the settlement of a deceased person's estate is binding upon the Federal as well as upon the State courts.

In *Miner* v. *Aylesworth*, (18 Fed. Rep. 199,) it was held by the Circuit Court of the United States for the District of Rhode Island, as against non-resident complainants, that, under the Rhode Island statute, no suit can be commenced against an administrator, as such, after three years from the time he gave public notice of his appointment. (*Bauseman* v. *Blunt*, 147 U. S. 652.)

Applying these principles to the present case, it would seem clear that the defendant in error, as a citizen of the State of Iowa, and having a legal claim against the estate of S. W. Matteson, deceased, had a right to elect to proceed to establish his claim by bringing a suit in the Circuit Court of the United States; and if he had brought his action against an existing administrator, the administration of the estate not having been closed under the statutory proceedings, and obtained a judgment, undoubtedly such a judgment, when presented to the probate court within the time fixed by its order, must have been received by that court as a claim against the unadministered estate.

But can it be said that, if the foreign creditor delays proceedings in the Federal court until after the time fixed by the order of the probate court for the presentment of claims had expired and after the final distribution of the estate had been effected, and after the final account of the administrator had been allowed and his office had become *functus officio*, and after all claims of local creditors had thus been precluded, he can use the Federal process to devolve a new responsibility upon the person who had acted as administrator, and to interfere with the rights of other parties, creditors or distributees, which had become vested under the regular and orderly administration of the estate under the laws of the State?

It is the policy of the State of Minnesota, like that of many of the States, to prescribe a shorter term of limitations to claims against the estates of decedents than claims against living persons. Can that policy be defeated by a ruling of the Federal courts that the provisions of the State in that regard do not apply to parties bringing suit in those courts? In that event, the very mischief pointed out and deprecated in *Yonley* v. *Lavender* would ensue, that "The rights of those interested in the estate who are citizens of the State where the administration is conducted are materially changed, and the limitation which governs them does not apply to the fortunate creditor who happens to be a citizen of another State." The answer given to such a proposition by this court in the case just cited was: "This cannot be so. The administration laws of Arkansas are not merely rules of practice for its courts, but laws limiting the rights of parties, and will be observed by the Federal courts in the enforcement of individual rights."

Let us now examine the reasoning employed by the Circuit Court of Appeals in reaching its conclusion in the present case. Having correctly held that, so far as the administration law of the State of Minnesota attempts to compel citizens of other States to establish demands against the estates of decedents only by a proceeding in the probate court of the State, it is ineffectual to accomplish that object, the court proceeded to say:

"It is said, however, that although the statute in question may be ineffectual to compel non-resident creditors to submit their demands to the appropriate probate court for allowance, yet, as a statute of limitations, it should be given effect to prevent the establishment of a demand in the Federal court of the State after such lapse of time that it cannot be established in the probate court. The vice of this argument as applied to the case in hand consists in the fact that the legislature of the State of Minnesota has not undertaken to bar any claim against a decedent's estate, absolutely, until after the lapse of eighteen months from the date of the order fixing the period of allowance, and in the case at bar that period had not expired when the action was commenced, to wit, on January 22, 1897.

"It is true that section 4509, when conferring the discretionary power to allow claims within eighteen months, imposes the limitation that they shall

be allowed 'before final settlement,' and it is also true that the final account of Matteson's administrator had been submitted to and approved by the probate court before this action was commenced. But it must be borne in mind that the administration law, section 4523, confers upon the probate court the power to determine when the final settlement of an estate shall be made, and to allow as much as one year and six months for that purpose. We think that the Federal court must be conceded the same power, as respects the claim of a non-resident creditor, to allow it within eighteen months, which is conferred upon the probate court of the State; and we are, furthermore, of the opinion that the right of a non-resident creditor to sue for the establishment of his demand in the Federal court cannot be made to depend on the length of time that the probate court happens to allow for making a final settlement. If the Federal court gives effect to laws limiting the period for establishing claims in the probate courts of the State, which differs essentially from the general statute of limitations, it should only be required to apply the absolute bar arising from lapse of time which the legislature has erected. There is much reason, perhaps, for saying that citizens of other States ought not to be allowed to maintain an action in the Federal court against a local administrator or executor after the expiration of a period when by the express command of the legislature no such action can be maintained in the local courts, provided the period fixed be a reasonable one; but the right of a non-resident creditor to bring his action in the national courts ought not to be conditioned or made to depend upon the time that a local court chances to approve a final settlement when the time of such approval rests in its discretion and is largely a matter of convenience. For these reasons we conclude that the case in hand, the same having been brought within less than eighteen months after the order fixing the period for the allowance of claims was made, was lawfully entertained by the trial court.

"Another claim which is interposed by the administrator as a defense to this action is that the approval of its final account and the order of distribution made thereon by the probate court on April 27, 1896, closed the administration, and operated without more as a discharge of the administrator, so that was in point of fact no administrator when the suit at bar was instituted. This view evidently was not entertained by the probate court by which the administrator was appointed, since the record discloses that that court, as late as November 21, 1896, entertained a petition on the part of the administrator, and at its instance made an order, founded thereon, by which the decree of April 27, 1896, was amended and corrected in important respects. It is manifest that the probate court acted upon the theory that it had not lost jurisdiction over the administrator, that it was still subject to its orders as to all matters pertaining to the estate, and would remain so until it had fully executed its decree and was formally discharged as administrator by an order made to that effect. And this assumption, on which the probate court appears to have acted, in our opinion was entirely correct. The order of distribution that was made on April 27, 1896, required certain acts to be done and performed by the trust company in its capacity as administrator, and until they had been done and performed and the court had approved of the administrator's acts in that behalf, it was clearly subject to the orders of the probate court, and its functions as administrator had not ceased. The view contended for by the administrator is entirely untenable, since it would deny to the probate courts

of the State the right to enforce such orders relative to the distribution of estates as they may see fit to make, leaving administrators, when final settlements are approved, in full possession of the property then in their hands, and at liberty to deal with it as they please, until they are called to account by some other tribunal than that from which they originally derived their authority. We are satisfied, therefore, that under the laws of the State of Minnesota the approval of a final settlement and an order of distribution made thereon does not operate forthwith to discharge the administrator, but that its effect is to give the distributees a right to the possession of the property that has been assigned to them and a right to invoke the power of the probate court as against the administrator to compel obedience to its orders."

The validity of this reasoning depends, of course, upon the correctness of the construction put by the learned court on the State statutes; and, as we have seen, in the cases cited, the Supreme Court of the State has placed an altogether different meaning on those statutes. They hold that the probate code of the State makes no provision for the formal discharge of an administrator, but the necessary legal effect of an order of the probate court, allowing the final account of the administrator and its final decree of distribution, assigning the whole of the estate to the heirs and distributees, is to remove the estate of the deceased from the jurisdiction of the court, and to render the office of administrator, which depends upon such jurisdiction, *functus officio;* and that, after the estate has been so settled and assigned, and while the final decree of distribution remains unreversed and unmodified, the probate court has no jurisdiction to entertain a petition to issue a citation to the administrator requiring him to further account for the property belonging to the estate, which is in his possession, or came into his possession.

Adopting, then, the construction put upon the administration laws of Minnesota, by the Supreme Court of the State, we have only to consider the force of certain other suggestions of the court below, which are, in some measure, independent of those already considered.

It is argued, in the opinion of the Circuit Court of Appeals, that, because section 4523 confers upon the probate court the power to determine when the final settlement of an estate shall be made, and to allow as much as one year and six months for that purpose, the Federal court must be conceded the same power as respects the claim of a non-resident creditor, to allow it with the eighteen months, which is conferred upon the probate courts of the State. This suggestion is manifestly based on a misconception of the language and legal purport of section 4524. That language is as follows: "The probate court at the time of granting letters testamentary or of administration shall make an order allowing to the executor or administrator a reasonable time, not exceeding one year and six months, for the settlement of the estate."

So that, expressly the time for the settlement of the estate must be fixed by the probate court at the time when the letters of administration are granted, and it is provided, by the following section, that "the probate court may, upon good cause shown by the executor or administrator, extend the time for the settlement of the estate not exceeding one year at a time, unless, in the judgment of the court, a longer time be necessary."

These sections have nothing to do with the limitation prescribed for the proof or presentation of the claims of creditors, which is found in section 4509. Moreover, in the present case, the court having fixed the period of six months within which the estate should be settled, the administrator, accordingly, having no good cause to show to the contrary, filed his final account of the settlement of the estate within the time so limited, and the account was allowed and the final decree of distribution made before the institution of the present suit.

Section 4509 provides that, at the time of the granting letters testamentary or of administration, the court shall make an order limiting the time in which creditors may present claims against the deceased for examination and allowance, which shall not be less than six months nor more than one year from the date of such order, and that no claim or demand shall be received after the expiration of the time so limited, unless, for good cause shown, the court may, in its discretion, receive, hear and allow such claim upon notice to the executor or administrator.

But it should be observed that such power to extend the time limit must be exercised, on good cause shown, "before final settlement," and, in the present case, no such good cause was shown, either to the probate court or to the Circuit Court of the United States, before final settlement. It is evident that the discretion to extend the time for proof of claims was to be appealed to for some good reason, that is, reason showing why the claim was not made or the suit brought before the expiration of the time fixed in the original order.

The Circuit Court of Appeals admits that "there is much reason for saying that citizens of other States ought not to be allowed to maintain an action in the Federal court against a local executor or administrator after the expiration of a period when, by the express command of the legislature, no such action can be maintained in the local courts, provided the period fixed by the legislature is reasonable, but the right of a non-resident creditor to bring his action in the national courts ought not to be conditioned or made to depend upon the time that a local court chances to approve a final settlement when the time of such approval rests in its discretion and is largely a matter of convenience." But the legislation of Minnesota does not make the limit within which claims must be made against the estates of decedents to depend on the exercise of discretionary power by the courts. It does provide that the probate court shall fix a

time within which claims must be presented, to wit, not less than six nor more than eighteen months. Between those limits of six and eighteen months the probate court may have power of discretionary action on good cause shown. But having once exercised that power, as in the present case, by fixing the term of probation at six months, any extension of that term could only be had, upon good cause shown, "before final settlement."

We are not called upon, by the facts of the present case, to determine whether a Federal court might or might not, on good cause shown, extend the time in which a claim might be asserted against a decedent's estate beyond the term previously fixed by the probate court. But it is sufficient to say that, in the present case, no application was made to the Federal court to exercise such a power, either before or after the limitation prescribed under the State statute had expired. All that was before the Circuit Court of the United States was an action at law upon a cause of action against a decedent's estate, which, under the laws of the State of Minnesota, could not be maintained in the courts of that State, because barred by the operation of the laws of the State regulating the administration of the estates of deceased persons. Moreover, it is obvious, and it has always been held, that the Circuit Court cannot, in the trial of an action at law, exercise the power of a court of equity. An application to the Federal court to decree an extension of time beyond the period previously prescribed by the probate court would have to be made by a bill in equity, showing good cause. (*Scott* v. *Armstrong*, 146 U. S. 499.)

Following our previous and repeated decisions, that the courts of the United States, when exercising jurisdiction over executors and administrators of the estates of decedents within a State, are administering the laws of that State, and are bound by the same rules which govern the local tribunals, we conclude, in the present case, that—

The judgment of the Circuit Court of Appeals must be reversed; the judgment of the Circuit Court is also reversed, and the cause is remanded to that court, with directions to enter judgment in conformity with the opinion of this court.

True copy.

Test:

Clerk Supreme Court, U. S.